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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1948**

**No. 143**

---

**ALVIN KRULEWITCH, PETITIONER,**

**vs.**

**THE UNITED STATES OF AMERICA**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JULY 6, 1948**

**CERTIORARI GRANTED OCTOBER 11, 1948.**



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2 Photograph of Belle DeMarco .....	167	omitted
3 Photograph of the El Chico Hotel ....	612	omitted
4 Id. Letter to Elizabeth Mary Sorrentino from defendant .....	234	omitted
5 Statement of Elizabeth Mary Johnston, dated December 8, 1941 .....	337	824
6 Notes concerning evidence gathered at apartment of Al Kay .....		103
6A Auto rental contract, dated October 24, 1941 .....	595	826
6B Auto rental contract, dated November 21, 1941 .....	595	826
7 Lease between Cora Blumberg and Pauline Hilson .....	619	826

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9, 10A to 10K—Twelve Telephone Company slips showing calls between New York and Miami .....	774	
11A Lease, dated June 7, 1936, between Irweis Holding Corp. and Bert Lewis .....	998	827
11B Memorandum Lease, dated June 5, 1939, signed by Bert Lewis .....	998	828
12 Lease, dated October 10, 1939, for Apartment 1-A, floor 1, 610 West 174th Street, signed by Ben Gordon .....	1004	omitted
13 Paper signed by Mildred Ollila .....	1030	829
14 Id. Statement from Ollila to Government .....	1049	omitted
15 Lease application for Apt. 325 E. 77 St., signed by Alvin Kay .....	1092	omitted
16 Lease of Apt. 325 E. 77 St. ....	1092	omitted
17 Three Pennsylvania Railroad ticket stubs for use on October 21, 1941 .....	1098	830
18A Tour sheet .....	1111	omitted
18B Ticket .....	1111	omitted
19A Ticket stub .....	1133	omitted
19B Tour sheet .....	1133	omitted
19C Redemption form for handling refunds .....	1133	omitted
20 Baggage record of the Pennsylvania Railroad .....	1149	omitted
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28 and 29—	Records of the Magistrates' Court, Women's Section .....	1354	omitted
30	Id. Paper .....	1776	omitted
31	Id. Statement of defendant taken at the U. S. Attorney's office on July 2, 1943 ..	1819	omitted
31A	Id. Copy of Statement, Exhibit 31 Id. ....	2167	omitted
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34 and 35—	Two papers .....	1854	omitted
36	Letter of reference from the Milton Barkin Management Corporation in the defendant's handwriting .....	1857	omitted
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T Id. Four slips .....	920	omitted
U1, U2, U3, U4—Four photographs of fur- niture factory of Samuel Levinson...	1189	omitted
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# United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,	}
Appellee,	
against	
ALVIN KRULEWITCH,	
Defendant-Appellant.	

## Statement Under Rule 15.

2

This is a criminal case commenced by the filing of an indictment on the 4th day of January, 1943.

The indictment contains three counts, charging violation of Title 18 of the U. S. Code, as follows:

(1) The first count charges the defendant-appellant together with one Rose Sookerman with having, on or about October 20, 1941, persuaded and induced one Elizabeth Johnston to go from New York City to Miami, Fla., for the purpose of prostitution, in violation of Section 399 of Title 18.

3

(2) The second count charges the said defendants with having transported or caused to be transported the said Elizabeth Johnston from New York City to Miami, Fla., for the purpose of prostitution in violation of Section 398 of Title 18.

(3) The third count charges the said defendants with conspiring to induce and transport the said Elizabeth Johnston from New York City to Miami, Fla., for the

*Statement Under Rule 15.*

- 4 purpose of prostitution in violation of Section 88 of Title 18.

There has been no change of parties, except only that the defendant Rose Sookerman is not a party to this appeal:

Four trials were had.

The first trial, before Hon. John W. Clancy and a jury, was commenced on July 7, 1943, and terminated on July 13, 1943, by a disagreement of the jury.

- 5 The second trial, before Hon. Gaston L. Porterie and a jury, was commenced on August 25, 1943, and concluded on September 1, 1943. The jury found the defendant-appellant and the co-defendant guilty on all three counts of the indictment.

The defendant-appellant was sentenced to 3 years and 6 months on the first and third counts and fined \$2500. together with a suspended sentence, plus two years in active probation, on the second count, to commence upon completion of the sentence on the first and third counts.

- 6 Upon application to this court, an order was made on October 18, 1943, admitting the defendant-appellant to bail in the sum of \$15,000. and the defendant-appellant was released and is now at liberty under said bail.

This conviction was reversed and a new trial ordered on August 21, 1944 by this Circuit Court.

The defendant was again tried for the third time before Moskowitz, J. and a jury on February 18, 1946. This trial resulted in a mistrial on February 19th, 1946. This mistrial was by consent of both parties.



*Docket Entries.*

The defendant was again tried for the fourth time before Leamy, J. and a jury from April 9 to April 25, 1947 which trial resulted in a verdict of guilty on all three counts with a recommendation of leniency. The defendant was sentenced to two years' prison term and two years' probation after the prison term. The defendant's bail was continued by the trial judge.

7

**Docket Entries.**

(Omitting entries relating solely to co-defendant)

1943

8

Jan. 4—Filed indictment.

Jan. 4—Alvin Krulewitch pleads not guilty. Bail \$3000. to be renewed. Bondy, J.

Jan. 4—Filed bond for Alvin Krulewitch for \$3000. Continental Casualty Co.

Jan. 25—Filed notice of appearance by William J. Wilson for Alvin Krulewitch.

Feb. 26—Filed opinion #14511, Leibell, J.—Motion to suppress evidence and for return of seized property and documents granted.

9

Feb. 26—Filed notice of motion and affidavits for an order to suppress evidence and for return of seized property and documents.

Feb. 26—Filed supplemental affidavits by Alvin Krulewitch and Pauline Baker.

Feb. 26—Filed affidavits in opposition.

May 14—Filed affidavit and order to show cause why a reconsideration should not be had of motion to suppress evidence obtained on December 6, 1941.

*Docket Entries.*

10 1943

May 14—Filed affidavits in opposition.

May 14—Filed affidavit by Edward C. Wallace.

May 14—Filed affidavit by William J. Wilson.

May 14—Filed copy of motion papers filed February 26, 1943.

May 14—Filed opinion #14669—Government's motion to reargue granted—defendant's motion to suppress evidence seized December 6, 1941, denied; defendant's motion to suppress evidence seized December 23, 1942, granted—Leibell, J.

11 June 5—Filed order suppressing records and documents seized on December 23, 1942. Motion to suppress evidence seized December 6, 1941, denied without prejudice—Leibell, J.

June 5—Filed order—unsigned.

June 12—Filed notice of appeal by Alvin Krulewitch from part of order filed June 5, 1943 denying motion to suppress evidence seized December 6, 1941.

July 7—Trial begun as to both defendants.

July 8—Trial continued.

12 July 9—Trial continued—Government rests—Motion to dismiss indictment denied.

July 12—Trial continued.

July 13—Trial continued and concluded. Jury unable to agree on verdict. Jury discharged. Bail of Alvin Krulewitch increased to \$30,000—remanded—Clancy, J.

July 16—Filed Notice of appearance for Alvin Krulewitch by David V. Cahill and William W. Wilson.

July 22—Filed petition and order to show cause to reduce bail of Alvin Krulewitch—Bright, J.

*Docket Entries.*

1943

13

July 22—Filed affidavit of Edward C. Wallace, United States Attorney, in opposition to motion to reduce bail of Alvin Krulewitch.

July 22—Filed opinion #14775. Motion to reduce bail denied.

Motion to issue writ of habeas corpus granted. Caffey, J.

July 30—Filed bond for Alvin Krulewitch dated July 13, 1943—"released on bail July 23, 1943."

July 29—Filed bond for Alvin Krulewitch dated July 23, 1943, for \$30,000—Manufacturers' Cas. Ins. Co.

14

Aug. 6—Filed mandate of C. C. A. dismissing appeal against order suppressing evidence.

Aug. 18—Filed notice of appearance of Curran & Stim, attorneys for Alvin Krulewitch.

Aug. 25—Filed substitution of George Wolf as attorney for Alvin Krulewitch, defendant.

Aug. 25—Before Hon. Gaston L. Porterie, J., trial begun as to both defendants.

Aug. 26—Trial continued.

Aug. 27—Trial continued.

Aug. 30—Trial continued—Government rests.

15

Aug. 31—Trial continued, defendant rests. Both sides rest. Motion for dismissal of indictment and for directed verdict of acquittal denied—summations—Porterie, J.

Aug. 31—Government moves that defendant Alvin Krulewitch be remanded—motion granted. Porterie, J.

Sept. 1—Trial concluded—Verdict—defendant Krulewitch guilty on counts 1-2-3. Defendant Sookerman guilty on counts 1-2-3. Motion to set

*Docket Entries.*

16

1943

aside verdict denied—both defendants remanded Sentence September 2, 1943—Porterie, J.

Sept. 2—Filed Judgment as to Alvin Krulewitch #44665. Sentence: Two and one-half years and fined \$2500. on count one.

One year and one day on count three.

Prison sentence on counts one and three to run consecutively.

Prison sentence on count three to begin after service on count one at a place of confinement to be designated by the Attorney General of the United States.

17

Imposition of sentence on count two suspended. Probation (inactive) for two years to begin after service on count three—subject to the standing probation order of this court. Defendant is not to stand committed for non-payment of fine on count one. Gaston L. Porterie, J.

Sept. 2—Issued commitment in triplicate for Alvin Krulewitch.

Sept. 3—Filed notice of appeal for Alvin Krulewitch.

18

Sept. 7—Filed affidavit and order for writ of habeas corpus for Alvin Krulewitch, for examination in supplementary proceedings. Writ issued—returnable September 9, 1943—Mandelbaum, J.

Sept. 13—Bail Alvin Krulewitch \$3000 given by Continental Casualty Co.—discharged on consent of Mr. Klein, Assistant U. S. Attorney—Knox, J.

Sept. 14—Filed remand as to Alvin Krulewitch dated August 31, 1943.

Sept. 15—Filed notice of appearance of Jac M. Wolff, attorney for defendant-appellant Alvin Krulewitch.



7

*Docket Entries.*

1943

19

Sept. 28—Filed order extending time of Alvin Krulewitch to file assignment or errors, record on appeal and brief to the 3rd day of November, 1943—Coxe, J.

Oct. 6—Alvin Krulewitch paid \$200 on account of fine to be held in escrow pending appeal.

Dec. 20—Filed order extending time of Alvin Krulewitch to file his assignment of errors, record and brief on appeal to January 20, 1944—Swan, C. J.

1944

Jan. 20—Filed order extending time of Alvin Krulewitch to file his assignment of errors, record and brief on appeal to February 10, 1944. So ordered, Frank, C. J. 20

April 7—Certified Record to C. C. A.

June 6—Filed Bond pending appeal of Alvin Krulewitch dated 10/18/43 in the amount of \$15,000 Manufacturers Cas. Ins. Co. surety.

Aug. 21—Filed Mandate of C. C. A. that Judgment of District Court as to Alvin Krulewitch be reversed and a new trial ordered.

Aug. 31—Filed Order on Mandate and Notice of Settlement; Mandate of C. C. A. made Judgment of this Court and case restored to docket for further proceedings. 21

1945

Sept. 5—Filed Transcript of Record of Proceedings—8/10/45.

Sept. 18—Filed Affidavit of Defendant Krulewitch for an adjournment of trial.

Sept. 17—Filed Opinion #16077 by Conger, J.—Notice of Motion brought in Civil 32-728.

## Docket Entries.

22

1945

Sept. 26—Filed Affidavit and Notice of Motion for an Order granting leave for defendant to make an inspection and photostatic copies of all defendant's papers, letters and documents—Motion argued—overruled with leave to renew before Trial Judge—Barksdale, J.

Sept. 26—Filed Affidavit in Opposition.

Sept. 26—Filed Affidavit and Notice of Motion for an Order granting leave to take depositions of John C. Gramling and George A. Smathers—Motion argued—Overruled with leave to renew before Trial Judge—Barksdale, J.

23

Sept. 26—Filed Affidavit in Opposition.

Oct. 4—Filed Transcript of Record of Proceedings—9-26-45.

1946

Feb. 18—Before Moskowitz, J. Trial begun—Jurors excused during argument on Defendant's Motion to suppress certain evidence offered by Government (Exh. 3).

Feb. 19—Trial cont'd—Hearing on Motion to Suppress ended—Mistrial granted by consent—Motion to suppress adjourned—*sine die*—Moskowitz, J.

24

Mar. 22—Filed Transcript and Record—Dated Feb. 18 and 19, 1946.

Feb. 21—Filed Order to take deposition of John C. Gramling and George A. Smathers and such other parties desired by either side at Miami, Florida—Moskowitz, J.

April 13—Filed Depositions of George A. Smathers and John C. Gramling and Govt's Exhibits 1 and 2; Deft's Exhibits A, A1, B and C, taken before Mary W. Manetta at Miami, Florida.

*Docket Entries.*

1946

25

July 11—Filed Transcript and Record of above proceedings—Dated 6-20-1946.

Oct. 24—Before Moskowitz, J. K906 Hearing as to correctness of Stenographic Minutes taken in trial of Deft. July 7, 1943 to July 13, 1943 before Clancy, J. Motion to suppress before Judge Moskowitz—Motion to Suppress denied with leave to renew before Trial Judge.

Nov. 15—Filed Stenographic Minutes—Dated 10-24-1946.

Nov. 15—"Filed Opinion #16659 Motion to Suppress Letter marked (Exh. 3) decided with leave to renew before Trial Judge"—Moskowitz, J.

26

1947

Jan. 20—Affidavit and Order to Show Cause why an Order should not be made to inspect or make photostatic copies of all papers, documents, etc. "Memo evidence." Motion granted. No opposition by Ass't U. S. Atty. Hilly—Coxe, J.

April 9—Trial of Alvin Krulewitch begun before Leamy, J. Testimony *in-re* suppression of evidence, etc. taken in the absence of jury.

April 10—Testimony *re* Suppression of Evidence etc., continued.

27

April 14—Testimony *re* Suppression of Evidence etc., continued and concluded.

April 15—Motion by Defendant to Suppress etc., granted. Trial continued—(Jury present).

April 16—Miscellaneous documents seized by the F. B. I. in raid on the apartment of the defendant ordered impounded.

April 17—Trial continued.

April 18—Trial continued—Government rests.

April 21—Trial continued.

*Docket Entries.*

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1947

April 22—Trial continued.

April 23—Trial continued.

April 24—Trial continued—Both sides rest.

April 25—Summations and Charge made—The Court charges jury who retire at 3:40 P. M. and return at 5:50 P. M. with the following verdict: Guilty on all three counts (3) with recommendation of leniency. Motion by defendant to set aside verdict—Denied.

29

April 25—Filed Judgment—Defendant sentenced—Two (2) years on Count One (1) imposition of sentence suspended on Counts Two and Three—Defendant placed on probation for two (2) years to begin after expiration of prison sentence on Count One subject to the standing probation order of this Court—present bail of \$15,000 continued pending appeal.

April 30—Filed Notice of Appeal by A. Krulewitch—Notice mailed to U. S. Marshal and Warden Detention H'd'qtrs, N. Y. C.

30

May 12—Filed Bond for A. Krulewitch pending appeal 5-12-47 for \$15,000 Cont. Cas. Co.

June 17—Filed Transcript and Record of Proceedings—Dated 4-9, 15, 16, 17, 18, 21, 22, 23, 24, 25, in 10-14.

June 23—Filed Affidavit and Notice of Motion for an Order enlarging time to file Assignment of Errors, Record on Appeal etc. to 7-24-1947—Memo endorsed. Motion argued. Motion granted. Time to file Record on Appeal extended to 7-15-47—Goddard, J.

July 9—Filed Order granting Motion extending time of Def't-Appellant A. Krulewitch to file Assign-



*Indictment.*

1947

31

ments of Error, Record on Appeal, etc., to and including 9-2-1947—L. Hand, U. S. C. J.

- Oct. 5—Motion to Circuit Court to remand case to Trial Court for hearing of new discovered evidence, to wit: Bailiffs instructions to jury and juror giving false answers on *voir dire*—Denied with letter to Leamy, J., if he wants to remand.  
Oral hearing on Motion to set aside verdict before Judge Leamy in Rutland, Vermont—Motion denied without hearing.

- Dec. 2—Filed Counter-Order and Notice of Settlement—Ordered that no request for remand be made—Leamy, J. 32

- Dec. 6—Filed Notice of Appeal by Alvin Krulewitch from Order by Judge Leamy—Filed 12-2-47.

- Dec. 9—Filed Designation of Record to be certified.

- Dec. 15—Motion to adjourn filing of record to Feb. 4, 1947.  
C.C.A.

1948

- Jan. 13—Motion to extend time to February 14, 1948.  
C.C.A.

33

**Indictment.**

IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

Southern District of New York, ss.: The Grand Jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for that District, upon their oath present:

*Indictment.*

34 That heretofore, to wit, on or about the 20th day of October, 1941, at the Southern District of New York and within the jurisdiction of this Court, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, did unlawfully, wilfully and knowingly, persuade, induce and entice, and did cause to be persuaded, induced and enticed, a certain woman, to wit, Elizabeth Mary Johnston, to go from one place to another in interstate commerce, to wit, from the City of New York, State of New York, to the

35 City of Miami, State of Florida, for the purpose of prostitution and debauchery and for other immoral purposes, with the intent and purpose on the part of the said ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, that said woman should engage in the practice of prostitution and debauchery and in other immoral practices, and did thereby knowingly cause and aid and assist in causing said Elizabeth Mary Johnston to go and to be carried and transported as a passenger upon a common carrier in interstate

36 commerce from the City of New York, State of New York, to the City of Miami, State of Florida; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 399, United States Code).

## SECOND COUNT.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That heretofore, to wit, on or about the 20th day of October, 1941, at the Southern District of New York and

*Indictment.*

within the jurisdiction of this Court, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, unlawfully, wilfully, knowingly and feloniously did transport and cause to be transported and aid and assist in obtaining transportation for and in transporting a certain girl, to wit, one Elizabeth Mary Johnston, in interstate commerce by common carrier, from a point in the State of New York, to wit, County, State and Southern District of New York to the City of Miami, State of Florida, for the purpose of prostitution, debauchery and other immoral purposes; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Title 18, Section 398, United States Code).

## THIRD COUNT.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That heretofore, to wit, beginning on or about the 15th day of September, 1941, and continuing up to and including the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and divers other persons to the Grand Jurors unknown, to commit an offense against the United

*Indictment.*

40 States, to wit, to violate Title 18, Sections 398 and 399, United States Code, by the means and in the manner hereinafter described:

It was a part of said conspiracy that on or about the 2nd day of October, 1941, at the City of Miami, State of Florida, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, one of the defendants herein, would execute a lease for a house located at 66 N.W. 5th Street, Miami, Florida.

41 It was further a part of said conspiracy that ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, in and about and during the month of October, 1941, at the City of New York, State of New York, would persuade, induce and entice a certain woman, to wit, Elizabeth Mary Johnston, to go from one place to another in interstate commerce, to wit, from the City of New York, State of New York, to the City of Miami, State of Florida, for the purpose of prostitution and debauchery and for other immoral purposes.

42 It was further a part of said conspiracy that during the period aforesaid, at the Southern District of New York, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, the defendants herein, would transport and cause to be transported and aid and assist in obtaining transportation for the said Elizabeth Mary Johnston in interstate commerce by common carrier from a point in the State of New York, to wit,



*Indictment.*

County, State and Southern District of New York, to the State of Florida, for the purpose of prostitution and debauchery and other immoral purposes. 43

**OVERT ACTS.**

1. In pursuance of said conspiracy and to effect the objects thereof, on or about the 1st day of October, 1941, at the City of Miami, State of Florida, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, one of the defendants herein, had a conversation with one Cora Blumberg.

2. In pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 15th day of October, 1941, the defendants, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, had a conversation with Elizabeth Mary Johnston. 44

3. In pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 20th day of October, 1941, the defendants, ALVIN KRULEWITCH, alias Alvin Kay, alias Ben Gordon, and ROSE SOOKERMAN, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, rode in an automobile from 325 East 77th Street, Borough of Manhattan, City, State and Southern District of New York, to the Pennsylvania Station at 33rd Street and Seventh Avenue, Borough of Manhattan, New York City. 45

*Bill of Exceptions.*

- 46 Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 88, United States Code).

(signed) MATHIAS F. CORREA,  
United States Attorney.

**Bill of Exceptions.**

UNITED STATES DISTRICT COURT.

47

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

vs.

ALVIN KRULEWITCH,

Defendant.

Cr. 113-388.

Before: Hon. James P. Leamy, District Judge, and a Jury.

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New York, April 9, 1947,  
10:30 o'clock a. m.

**Appearances:**

John F. X. McGohey, Esq., United States Attorney, by John C. Hilly, Esq., Assistant United States Attorney, for the Government.

Sabbatino & Todarelli, Esqrs., Attorneys for Defendant; Thomas J. Todarelli, Esq., Nicholas H. Pinto, Esq., and Edward A. Fischetti, Esq., of Counsel.

*Voir Dire Examination of Jurors.*

Mr. Hilly: The Government is ready for trial.

Mr. Todarelli: Ready.

The Clerk: Joseph Bailey, Thomas Newman,—

(At this point there were proceedings not reported.)

The Court: Will counsel please come to the bench?

(Discussion off the record at the bench.)

The Court: Ladies and gentlemen: This is a criminal prosecution instituted by the United States Government against Alvin Krulewitch—

Is that the correct way to pronounce that name?

Mr. Todarelli: That is right.

The Court: Thank you. —standing at that table.

(Defendant rises.)

The Court: This defendant is charged with a violation of the Mann Act; in other words, transporting a woman in interstate commerce for immoral purposes.

Now, are any of you acquainted with Alvin Krulewitch?

(No response.)

The Court: Are any of you acquainted with his attorneys, Mr. Sabbatino and Mr. Todarelli who is sitting at the table?

Mr. Todarelli: Mr. Sabbatino is not here, your Honor. That is the firm which represents Mr. Krulewitch.

The Court: Are any of you acquainted with Mr. Todarelli, or have any of you employed him as your counsel at any time?

(No response.)

The Court: Have any of you read about the case or heard it discussed, or know anything about it in any way?

(No response.)

The Court: Is there any reason that you know of why you can't try the case fairly on the evidence as it comes to you before the court?

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*Voir Dire Examination of Jurors.*

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(No response.)

The Court: If there are other questions counsel may interrogate the jury.

Have you any questions, Mr. Todarelli?

Mr. Todarelli: Yes, I have.

The Court: Have you any, Mr. Hilly?

Mr. Hilly: Yes, I have, your Honor.

The Court: Let Government counsel go first then.

53

Mr. Hilly: I would like to ask the ladies and gentlemen of the jury, during the course of this trial some of the evidence will be given to you by a woman who is a prostitute. Would the fact that she is a prostitute tend to have you consider her testimony in the light of all the circumstances of the case, or would the members of the jury by virtue of the fact of this woman's profession, would you disregard it and more or less be inclined to say, "I would not believe it"?

(No response.)

Mr. Hilly: Have any of you any preconceived notions with respect to that?

(No response.)

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Mr. Hilly: My name is John C. Hilly. Do any of you know me, or do you know Mr. John F. X. McGohey, the United States Attorney, or any one on the staff of the United States Attorney for the Southern District of New York?

(No response.)

Mr. Hilly: Now, some special agents of the Federal Bureau of Investigation will testify in this case. Do any of you know, or are you acquainted with any federal agents of the Bureau of Investigation?

Juror No. 6: Yes, sir, I am acquainted with a federal agent.

*Voir Dire Examination of Jurors.*

Mr. Hilly: Would that fact prejudice you in favor of the Government? 55

Juror No. 6: No, sir.

Mr. Hilly: You would be able to sift and hear the evidence fairly, is that correct now?

Juror No. 6: Yes.

Juror No. 2: I might say I have two friends F. B. I., pretty close.

Mr. Hilly: And are they presently in the New York office?

Juror No. 2: I think, yes, sir.

Mr. Hilly: And is your acquaintance— 56

Juror No. 2: Do you want to know his name?

Mr. Hilly: No, I am not particularly concerned with his name, no, sir. Would the fact that you have two friends in the F. B. I., would that influence you in any manner? You would sift and hear the evidence?

Juror No. 2: I think so.

Mr. Hilly: And decide the case as the facts—as you feel the facts warrant, is that correct?

Juror No. 2: Yes.

Mr. Hilly: Of course, taking the instructions with respect to the law from his Honor, is that correct? 57

Juror No. 2: Yes.

Mr. Hilly: I have no further questions.

Mr. Todarelli: Mr. Mesnick, I am sorry, I did not hear what you told Mr. Hilly.

Juror No. 6: I know an F. B. I. man.

Mr. Todarelli: Socially?

Juror No. 6: Yes.

Mr. Todarelli: How well do you know him?

Juror No. 6: Well, he is a neighbor, and I know him pretty well.



*Voir Dire Examination of Jurors.*

58 Mr. Todarelli: Did you ever discuss a criminal case with him, and particularly about the defendants?

Juror No. 6: Well, he does not discuss business with me, but I know what he is doing.

Mr. Todarelli: Would the fact that you know him militate in any way whatever in deciding the case on the law and evidence?

Juror No. 6: No.

Mr. Todarelli: You would not have any mental reservations of any kind?

Juror No. 6: No.

59 Mr. Todarelli: It may develop that the testimony of the special agents, that is, the Federal Bureau of Investigation agents, will be attacked by the defense. If that is so, would your friendship with this agent cause you to have such a feeling about the F. B. I. generally that you would discount any attack that was made upon the testimony?

Juror No. 6: I do not believe it would have.

Mr. Todarelli: You would not start out with any handicap, would you?

Juror No. 6: No.

60 Mr. Todarelli: And perhaps, Mr. May, I should ask you those same questions. Would you start out with any pre-disposed feeling in favor of the F. B. I. to the extent that you would not disbelieve any agent at any time?

Juror May: No, sir.

Mr. Todarelli: You would be able to give us a fair trial, wouldn't you?

Juror May: Yes.

Mr. Todarelli: Of course, that is all we want.

Ladies and gentlemen, this is the fourth trial of this case, and I should like to ask if any member of the jury was

*Voir Dire Examination of Jurors.*

called on any of the other three trials? In other words, did the name Alvin Krulewitch mean anything to you whatever? 61

(No response.)

Mr. Todarelli: My name is Todarelli. My partner, who will not appear at the trial, is Peter Sabbatino.

This afternoon or tomorrow I will be joined by another lawyer from our office, Nicholas H. Pinto, and at the end there is another associate, Edward A. Fischetti.

A Juror: May I interrupt you? Is this Nicholas Pinto from Brooklyn?

Mr. Todarelli: Former County Judge from Brooklyn. 62

The Juror: I am very close.

Mr. Todarelli: Would that fact—

The Juror: He was my counsel for the last thirty years.

Mr. Todarelli: I think perhaps Mr. Hilly would join with me in excusing Mr. May.

The Court: I think so. Do you have any objection?

Mr. Hilly: I have no objection, your Honor.

The Clerk: Mrs. Agnes Hopp.

Mr. Todarelli: Do you want to question?

The Court: No, you go ahead, Mr. Todarelli.

Mr. Todarelli: Thank you.

Mrs. Hopp, were you able to hear the questions that I put to the jury? 63

Juror Hopp: Yes.

(At this point there were proceedings not reported.)

Mr. Todarelli: Has any member of the jury served in a criminal case either in this court, or in the Court of General Sessions?

A Juror: I have.

Mr. Todarelli: How many criminal cases?

The Juror: About three.

*Voir Dire Examination of Jurors.*

64 Mr. Todarelli: Any other member of the jury?

A Juror: Yes, sir.

Mr. Todarelli: Here?

The Juror: Yes.

Mr. Todarelli: How many roughly?

The Juror: Several.

A Juror: I don't know the definition of "served." I was on one yesterday, but it did not go to the jury room.

Mr. Todarelli: That is serving on the jury. Of course, there was a plea of guilty during the trial.

The Juror: I came back from lunch.

65 (At this point there were proceedings not reported.)

Mr. Todarelli: In this case there will be testimony of vice. Would you prefer not to serve on the jury because of the vice?

(No response.)

Mr. Todarelli: The Court has told you the defendant is charged with having transported this girl in interstate commerce for purposes of immorality. Would the mere fact that an indictment, which, after all, is only an accusation, would the mere fact that there is such an indictment against him prejudice you against him from the start so that you could not start with a free mind?

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(No response.)

Mr. Todarelli: I take it by your silence that that would not.

If it should develop during the trial that he had lived with women to whom he was not married, would that prejudice you to such an extent that you could not judge the facts of this particular case fairly and on the merits?

A Juror: Speak a little louder, please.

Mr. Todarelli: Thank you. Would any member of the jury be inclined to give further weight to the testimony of

*Voir Dire Examination of Jurors.*

an agent for the Federal Bureau of Investigation than you would give to any other witness? In other words, would you judge both as they testify on the stand and give their testimony regardless of what their occupation or official position may be? 67

(No response.)

Mr. Todarelli: Will the members of the jury keep in mind that the burden of proof is constantly on the Government and that the defendant is presumed to be innocent until you go out of the juryroom? Will you keep that constantly in mind during the trial? 68

Is there any member of the jury who knows of any reason whatever, any reason whatever why he can't or she can't sit on the jury and give both sides a fair trial?

(At this point there were proceedings not reported.)

The Court: Have you any further questions, Mr. Hilly?

Mr. Hilly: I have none, your Honor.

Mr. Todarelli: The defense will excuse jurors Nos. 2 and 6, your Honor.

The Clerk: Frederick Laigle, No. 2; Robert Hordern, No. 6.

Mr. Hilly: Mr. Laigle and Mr. Hordern, you have heard my questions and the questions of Mr. Todarelli? 69

Is there any fact that those questions call to mind that you feel would disqualify you from serving on this jury?

(At this point there were proceedings not recorded.)

Mr. Todarelli: It was quite evident, Mr. Laigle and Mr. Hordern, not all the members of the jury were able to hear what I asked. At the risk of being somewhat repetitious I would like very briefly to tell you my name is Todarelli. That is Mr. Fischetti (indicating) over there at the end. Judge, former County Judge, Pinto will be associated with me, and my partner's name is Sabbatino. Mr.



*Voir Dire Examination of Jurors.*

70 Hilly is representing the Government, and, of course, the United States Attorney is John F. X. McGohey.

Do any of the jury know any of these people I have mentioned to you, particularly Mr. Laigle and Mr. Hordern, are you acquainted with any member of the Federal Bureau of Investigation?

Juror Hordern: No.

Mr. Todarelli: You are not either, Mr. Laigle?

Juror Laigle: No.

Mr. Todarelli: Do you have any prejudice against a man merely because he is charged with a crime of this character?

71 Have either one of you served on any jury that was called in this case?

(No response.)

Mr. Todarelli: Does either of you know anything whatever that might prevent you from serving on this jury and giving us a fair trial?

Is there any question that occurs to any member of the jury that I might not have uttered that perhaps you ought to tell me so as to enable me to judge whether or not you would be acceptable to the defense?

72 A Juror: I had a nephew during the war that was with the F. B. I., not with them now.

Mr. Todarelli: Do you think that would prejudice you in any way whatever?

The Juror: No, I don't see why it should.

Mr. Todarelli: In favor of the F. B. I.?

The Juror: I don't see why it should.

Mr. Todarelli: Are you an insurance underwriter, Mr. Hall?

Juror Hall: That is right.

(At this point there were proceedings not reported.)



*Voir Dire Examination of Jurors.*

Mr. Todarelli: The card here says "Painting Inspector." Will you tell us what that means? 73

A Juror: I work for the Metropolitan Life. I inspect the painting after the contractors do the work.

(At this point there were proceedings not reported.)

Mr. Todarelli: Mrs. Herbert, are you employed now?

Juror Herbert: Yes.

(At this point there were proceedings not reported.)

Mr. Todarelli: Mrs. Grantham, are you employed? You were formerly a teacher.

The Juror: A housewife.

(At this point there were proceedings not reported.)

The Clerk: Mr. Shenkler, you are excused.

J. Douglas Gray.

(At this point there were proceedings not reported.)

The Clerk: Mr. Collette and Mr. Scanlon both excused by the defendant. Burton Bremer, No. 10, James Stewart, No. 11. 74

(At this point there were proceedings not reported.)

The Clerk: No. 7. Mr. Mangold, you are excused.

Mrs. Celestine Schneiderman.

(At this point there were proceedings not reported.)

Mr. Hilly: If your Honor please, the jury is satisfactory to the Government. 75

Mr. Todarelli: The jury is satisfactory to the defense.

(At this point the jury was duly impaneled and sworn.)

Mr. Hilly: If your Honor please, that last question of Mr. Todarelli, that he is presumed to be innocent until you go into the juryroom, I don't think that is a correct enunciation of the law. I suggest it probably would be better phrased if your Honor instructed the jury to the effect that he is presumed to be innocent until the Government proves him guilty beyond a reasonable doubt.

*Opening Statement by Mr. Hilly.*

76 The Court: He is presumed to be innocent until the Government has proven him guilty beyond a reasonable doubt. That is the rule, isn't it?

Mr. Hilly: Certainly.

The Court: That might happen before they go into the juryroom, might it not?

Mr. Todarelli: Certainly it might.

The Court: I will take care of that in my charge.

(At this point there were proceedings not reported.)

The Court: While we are getting some more jurors we will take a recess.

77 (Short recess.)

(At this point there were proceedings not reported.)

Mr. Todarelli: The alternates are satisfactory to the defense, your Honor.

(At this point the *voir dire* examination of the jurors was concluded.)

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

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MAURICE D. FLYNN,  
Official Court Reporter,  
U. S. District Court.

(April 9, 1946.)

(A jury was duly impaneled and sworn.)

The Court: Have you an opening statement, Mr. Hilly?

Mr. Hilly: I have, your Honor.

May it please your Honor, Madam Forelady, Ladies and Gentlemen of the Jury: You have just been sworn to try this issue between the United States of America and the

*Opening Statement by Mr. Hilly.*

defendant Alvin Krulewitch. Krulewitch is also known by 79  
the name of Alvin Kay, Ben Gordon and Ben Lewis.

In this case there is an indictment and it contains three counts.

Now, at the outset, I might state to you ladies and gentlemen of the jury that an indictment is merely an accusation; it's only a charge; its sole purpose is to bring this case into this court for trial, and it is no evidence of the guilt or innocence of a defendant on trial, and in this case it is no evidence of the guilt or innocence of the defendant Alvin Krulewitch.

Now let us briefly look at the indictment. As I stated, it 80  
contains three counts.

The first count charges that Alvin Krulewitch and one Rose Sookerman persuaded and induced one Elizabeth Mary Johnston to go from New York City to Miami, Florida, for the purpose of prostitution on or about October 21, 1941.

The second count charges the same two people, that is, Krulewitch and Rose Sookerman, with causing to be transported and transporting Elizabeth Mary Johnston from New York City to Miami, Florida, for purposes of prostitution. 81

And the third count charges that these two same people conspired and agreed to induce and to transport Elizabeth Mary Johnston from New York City to Miami, Florida.

The indictment names two defendants. However, you ladies and gentlemen are only concerned with one defendant, Alvin Krulewitch. So far as the other defendant is concerned, the case has been disposed of as far as this jury is concerned.

Now, at the outset I might state to you that the guilt or innocence of this defendant is to be determined from the

*Opening Statement by Mr. Hilly.*

82 testimony of witnesses who will take the witness stand in this court and under oath tell you what they saw, what happened, and what was said, and you in arriving at your verdict need only exercise the same amount of common sense that you exercise in solving the problems that confront you in your daily life.

Therefore, let us briefly consider what will be proven; what proof will be presented to you for your consideration in arriving at your verdict. The Government will prove that in June of 1939 Elizabeth Mary Johnston met Alvin Krulewitch on Broadway, and that same night she was introduced to Rose Sookerman by him; that that night he took her to dinner and then to Coney Island, and later that same evening they returned to his apartment, which at that time was located at 555 West 156th Street, in the Borough of Manhattan; that she stayed in that apartment that night with Krulewitch; and that Rose Sookerman likewise remained in the apartment.

Now in addition to this apartment at 555 West 156th Street, Krulewitch rented another apartment at 515 West 156th Street, in the name of Lewis. The apartment at 555 was rented in the name of Gordon.

84 Now, about a week after that first meeting Krulewitch and Elizabeth Mary Johnston went to Chicago by car. This was Krulewitch's car. While in Chicago they made several trips outside the city limits, and visited various roadhouses and a house of prostitution.

At this house they visited outside the city limits of Chicago, Krulewitch had a conversation with a woman, or the name by which she is known as the Madam, who operated this house. This conversation had to do with Elizabeth Mary Johnston working in the house. The woman or madam said that Johnston could work in the house if Krule-



*Opening Statement by Mr. Hilly.*

witch came for her at night and took her home, otherwise she would have to remain overnight in the house. Krulewitch was willing to do this. However, Johnston was unwilling to work in this house. 85

Thereafter Johnston returned to New York City by bus. Her ticket was paid for by Alvin Krulewitch. And she was met at the bus terminal in New York City by Rose Sookerman. Krulewitch prior to her departure from Chicago had sent a telegram to Sookerman directing that she meet Johnston in New York City, and Sookerman did in fact meet Johnston upon her arrival in New York City from Chicago. 86

Upon her return to New York City she and Sookerman went to the apartment at 555 West 156th Street. Now, it was at about this time that she met a woman by the name of Belle DeMarco. Belle DeMarco was a—

Mr. Todarelli: Your Honor,—I am sorry, your Honor: may we come up to the bench on this?

The Court: Yes.

(Conference at the bench between Court and counsel off the record, not in the hearing of the jury.)

Mr. Hilly: It was about this time that Elizabeth Mary Johnston met Belle DeMarco. Belle DeMarco was a bookie for houses of prostitution in New York City, and she was introduced to Elizabeth Mary Johnston by Sookerman and by Krulewitch. And at that time Belle DeMarco put her to work in various houses and the money she earned in this fashion was turned over to Alvin Krulewitch. 87

Now to go back to Chicago for the moment. After Johnston's return from Chicago, Krulewitch remained there and was there for a period of about one week. While he was there he telephoned Johnston and Sookerman one night and told them that he was having trouble with his car and needed



*Opening Statement by Mr. Hilly*

88 money to repair it, and requested that they send him money. They did in fact send him money. This money they earned by prostituting themselves.

Now thereafter Sookerman and Elizabeth Mary Johnston practiced prostitution at 555 and 515 West 156th Street.

Now, in October of 1939, they moved up to an apartment on 174th Street, which was rented by Krulewitch in the name of A. Gordon. However, for a period of some time they continued to practice prostitution at 515. Within a few days they moved them up to an apartment located on 171st Street, and from this apartment and from the apartment on 174th Street they practiced prostitution.

89 Now in October of 1939 in the apartment on 171st Street, Sookerman and Johnston were arrested by members of the New York Police Department's Vice Squad. Johnston was found guilty. However, she received a suspended sentence on that particular charge but was returned to Bedford Reformatory as a parole violator. The correct name of the reformatory is Westfield State Farms, located at Bedford Hills, New York. And at this institution she served an additional year. It was during this time that Krulewitch attempted to have her released from Westfield State Farms

90 on a writ of habeas corpus. However, she was finally released in December of 1940.

Upon her release she went upstate and lived with her mother. Krulewitch visited her on three or four different occasions and attempted to have her come back to New York City. She did not, however, return to New York City until March, 1941, and at that time commenced to live with Krulewitch and Sookerman in an apartment rented by Krulewitch, located at 325 East 77th Street, Borough of Manhattan, City of New York. And at that time, that is,

*Opening Statement by Mr. Hilly.*

upon her return to New York City, at Krulewitch's direction she went to work as a prostitute. 91

Now, prior to the time of her arrest in October, 1939, Sookerman had purchased a cider stube. This cider stube had been purchased by Sookerman but in fact was owned by the defendant Krulewitch. In addition to which he owned three or four other cider stubes in the Yorkville section of New York City. Now, in these cider stubes soft drinks were sold and cider. However, the evidence will show that the cider stubes owned by Krulewitch and the one owned by Sookerman were merely a front for a house of prostitution. And at Krulewitch's direction Johnston 92 would go to work in the cider stubes. She would generally start to work around 11 or 12 o'clock in the morning and work until midnight. And the money she earned in these cider stubes was turned over to Krulewitch. She would generally earn between \$30 and \$50 a day, sometimes less, sometimes more, but her average was generally between \$30 and \$50 a day.

Now, in the early part of October of 1941 Krulewitch made a trip to Miami, Florida, by himself, and in Miami, Florida, he contacted a woman named Cora Blumberg who owned a hotel named El Chico, which was located at 66 93 Northwest 5th Street, Miami, Florida.

Krulewitch rented this hotel in the name of Pauline Hillson, and he signed the lease Pauline Hillson, per A. Kay. The name Hillson was a name by which Rose Sookerman was sometimes known. And at the time of the rental the lease was signed for a period of five years, and a deposit of approximately \$300 was paid.

Krulewitch came back from Miami, Florida, within a period of a week, and at that time had a conversation with Johnston and Sookerman. He told them that he had been

*Opening Statement by Mr. Hilly.*

94 down to Florida, and that they would be better off down there. He also told them that it would be a good thing if they went away, as they were having trouble with the Vice Squad of the New York City Police Department, who were attempting to stamp out the prostitution practices in these cinder stubes. He said that if they went down there they would be better off, that they would have their own house, and he pointed out that he had rented the El Chico Hotel, and that they could work down there without any interference from the police department of Miami.

95 Now, on October 9, 1941, Krulewitch went to the Pennsylvania Station, and at that time purchased three coach tickets for Miami, Florida, leaving on October 21st. Two of the tickets were one-way to Miami, Florida, and the third was a round-trip to Miami, Florida. On October 20, 1941, Krulewitch went to Pennsylvania Station and checked five pieces of baggage through to Miami on the tickets he had purchased on October 9th, and on that same day purchased another round-trip ticket between New York and Miami, Florida, commencing on November 25, 1941.

96 On October 21, 1941, Krulewitch, Johnston and Sookerman left the apartment at 325 East 77th Street, New York City, and proceeded to the Pennsylvania Railroad Station. At that time all three boarded the train at the Pennsylvania Station for Miami, Florida. However, they did not proceed directly to Miami, but that same day stopped off at Baltimore, Maryland, and went to a furniture store owned and operated by Krulewitch's uncle. At this furniture store Krulewitch entered and purchased furniture for use in the El Chico Hotel at Miami, Florida. Krulewitch directed that the furniture be delivered to this hotel, and the evidence will show that he likewise paid for this furniture, making part of the payment in cash and part by check.

*Opening Statement by Mr. Hilly.*

After the purchase of the furniture they went back to the station at Baltimore, Maryland, and boarded a train and proceeded on their way to Miami, Florida. They arrived in Miami, on October 22nd, 1941. Upon their arrival they took a taxi from the station and proceeded to the El Chico Hotel. 97

Now, Krulewitch remained in Miami for a period of about one week. During this week he assisted Sookerman and Johnston with making the place presentable; he helped hang curtains and clean it. No prostitution, however, was practiced by Johnston at this time. The evidence will disclose, though, that Sookerman did practice prostitution even during the week that Krulewitch was in Miami. 98

Now, about a week after his arrival in Miami, Florida, he returned to New York City, using the round-trip ticket that he had purchased on October 9th. At this time he still had another round-trip ticket which he purchased on October 20th, calling for transportation to Miami on November 25, 1941.

After Krulewitch left, Johnston and Sookerman commenced to practice prostitution at the El Chico Hotel, and they continued in this work until November 11, 1941, when they were arrested by members of the Vice Squad of the Miami Police Department. 99

That night a telegram was sent to Krulewitch at 325 East 77th Street, New York City. About two weeks later he returned to Miami, Florida. The evidence will show that he went to Pennsylvania Station and cancelled the ticket calling for transportation on November 25th for one calling for transportation on November 18th or 20th, 1941. Upon his arrival in Miami, Florida, Krulewitch went about and through people he knew in Miami, he obtained another



*Opening Statement by Mr. Hilly.*

100 house of prostitution for Sookerman and Johnston to work in, and thereafter he returned to New York City.

At this time Johnston was sick and only worked for a period of three or four days and Sookerman worked a little while longer. Thereafter they both took the train to New York City and arrived in New York City on December 5, 1941. They stopped at the apartment at 325 East 77th Street. Johnston had brought certain luggage with her and she left it at the apartment, and that same day took a train to visit her mother in upstate New York. Simultaneously Sookerman took a train back to Miami, Florida.

101 Now, Johnston stayed in her home for a period of three or four days, when she was arrested by a special agent of the Federal Bureau of Investigation. She was transferred to a jail in Rochester, New York, and remained there for a period of about a week. During that time she was visited by her mother and by Sookerman who had returned from Miami, Florida. At that time Sookerman told her that—  
Mr. Todarelli: Your Honor, I object to this. It is plainly hearsay, and I do not think it is proper for Mr. Hilly to tell the jury anything about a conversation between Sookerman and this party Johnston.

102 Mr. Hilly: If your Honor please, I will approach the bench on that question.

The Court: Very well. Please come up.

(Discussion at the bench off the record, not in the hearing of the jury.)

The Court: The jury will understand that anything that is said by counsel in an opening statement is not evidence at all. It is simply counsel's idea of what the evidence will be. You are not to be guided in any way by the opening statement of counsel. You are to be guided only by the evidence itself as it comes in.



*Opening Statement by Mr. Hilly.*

Mr. Todarelli: Will your Honor rule on my objection?

103

The Court: Your objection is overruled.

Mr. Todarelli: I respectfully except.

Mr. Hilly: At this time Sookerman and Johnston had a conversation, this is in Rochester, New York, and at that time Sookerman told Johnston that they should take the blame for the transportation to Miami, Florida, from New York City, that Krulewitch was an old man and that he couldn't do time. Ultimately Johnston was taken to Jacksonville, Florida, and at that time she was bailed out. She did not put up the money for her bail bond, that was put up by Sookerman and Krulewitch.

104

Thereafter she returned to New York City, and for the Christmas holidays of December, 1942, she went up to her mother—1941 that is—she went up to visit her mother in upstate New York and did not return to New York City until January of 1942. At that time, at Krulewitch's direction, she again commenced to work in the cider stubes which he operated. However, at that time Krulewitch suggested, because of the arrest that they live apart, and she took up separate residence from that of Krulewitch. However, she continued in her original occupation, and the money she earned Krulewitch met her and took from her.

105

Later, about the latter part of February or early part of March, 1942, at Krulewitch's direction she went up to Amsterdam, New York, and there continued in her original occupation. Krulewitch visited her at Amsterdam, New York, and took from her the moneys she earned.

Now, ladies and gentlemen, briefly those are the facts that will be proven in this Court. That is the testimony that will be offered to this jury. That is the entire struc-

*Opening Statement by Mr. Todarelli.*

106 ture of the Government's case. And I feel that when this jury has heard this testimony it will find the defendant Alvin Krulewitch guilty as charged.

Thank you.

The Court: Do you wish to defer your statement, Mr. Todarelli?

Mr. Todarelli: No, your Honor. With your Honor's permission I would like to make my statement now. I think I will be through before 1 o'clock.

The Court: Very well.

107/ Mr. Todarelli: If your Honor please, Mr. Hilly, Mrs. Swift, and ladies and gentlemen of the jury. I should like to emphasize what Judge Leamy has already told you, I only repeat it because I do want to make it emphatic, and that is that nothing that Mr. Hilly said is any evidence whatever in this case and nothing that I say is any evidence whatever of the facts in this case.

108 Mr. Hilly has stated to you what he expects to prove, and I should like to state to you what we expect to prove. Mr. Hilly has given you a very detailed history of the relationship between Krulewitch and this girl. He has omitted a good many things that I think perhaps it might be well for you to have told to you before the witnesses take the stand.

Krulewitch was in the advertising business for 28 years before he met this woman. He had never been in any trouble of any kind, except for traffic violations, and I think there was one minor labor violation, but outside of that he was never in any trouble of any kind. And at the time that he met this girl he had an income from his business, and there was no need whatever for him to take up with this woman and live from her earnings.

*Opening Statement by Mr. Todarelli.*

He had his frailties. Don't we all? And one of them was that he fell in love with this girl, a mistake that has hounded him now for eight years, because he met her in June, 1939, and the charge in this case, the transportation in this case is alleged to have taken place on October 21, 1941, almost five and a half years ago. And I don't know, ladies and gentlemen, of one single, solitary thing that Mr. Hilly told you that he expects to prove that will not come out of the mouth of this girl, Elizabeth Mary Johnston, as she is named in the complaint. And because that is so, I ask you now, in my brief remarks to you, to pay the closest attention to her. 109

From experiences of the other three trials I have reason to believe that she will be a very difficult witness. She will burst into tears; she will lie; she will become impertinent not only with me but with everybody else in the courtroom. I promise you that. And I am going to ask you to watch her, because I am confident that once you are satisfied that she is lying and that this is a part of her imaginative mind to harass my client, that the case of the Government will be at an end. 110

Mr. Hilly told you that my client is known by two other names, and it will develop why he used the name Gordon and why he used the name Lewis. He used the name Lewis because he lived with this girl. She was his mistress. And he used the name Lewis to cover that up. And he used the name Gordon because he applied for an automobile license and inasmuch as he had many violations, traffic violations, against him, parking violations—I think at one time he paid some 13 or 14 fines together for parking—he used the name Gordon at an apartment that he rented with this girl so that when the investigators came around they 111

*Opening Statement by Mr. Todarelli.*

112 would find the name Gordon there and he could get the license. But there wasn't any criminal intent whatever in the use of these names.

And Mr. Hilly did not tell you the names that this girl has gone under. Joyce Winstron, Walakowski, Elizabeth Sorentino. The last trial she was known as Mrs. Curtis. She took the witness stand and testified as a Mrs. Curtis, although she admitted she was married to Mr. Sorentino at the time. I don't know what her name is going to be today when she takes the witness stand.

113 We will show you that long before she met Alvin Krulewitch, seven years before she met Alvin Krulewitch, she was no good. She was convicted in upstate New York for prostitution. And not only that, but as a result of her activities seven years before she met Krulewitch, or some years before she met Krulewitch, men went to jail because of her. We will prove to you that she is an extortioner, a perjurer, a cheat and a liar. And as much as I will hesitate to attack her character, it is unfortunately part of my job to do that.

114 And if you will need any further proof of the kind of girl that this witness is, she will admit to you that two months before the first trial of Krulewitch in this court she didn't want him at liberty and concocted a story with a girl named Virginia Cole, as a result of which they came down to this court house and they saw the United States Attorney here, and they said, "Krulewitch is trying to intimidate us." And as a result of that he was arrested two months before his trial on this charge and he was held in bail for charges of intimidation. And then when she took the stand she admitted that she had framed him, and there wasn't any single scintilla of justification for the charge. She had



*Opening Statement by Mr. Todarelli.*

framed him. That in itself should be, and I think will be, 115  
conclusive evidence of the fact that she is framing him  
here and now.

Now, he met her in June of 1939. He fell in love with her,  
and he is frank to admit that to you. He took her to various  
places. He took her to Schoon Lake, Atlantic City, and  
other places. And, as she will testify on the stand, he took  
her to some of the nicest places that she had ever been to  
in her life.

She had some kind of a lung ailment at the time, and he  
was very solicitous because of that, and he took her to doc- 116  
tors, and he had X-ray photographs taken. And it devel-  
oped that she needed a warmer clinic, so he sent her down  
to Virginia Beach with this Rose Sookerman and he paid  
all her expenses there. And she admits on the stand that  
she did not go there for any immoral purpose whatever.  
But it developed that she met a sailor there. And as you  
people will realize from her testimony, she could not resist  
the temptation to go to bed because she would go to bed  
with any man at any time. And she went to bed with him.  
And eventually Krulewitch found it out; he discovered  
some photographs, some snapshots of this sailor and her.  
And they had quite a quarrel about it. And finally he for- 117  
gave her.

But one day she disappeared. And Krulewitch didn't  
know a thing about this criminal record of hers before they  
met. He did not know that she had been sent to the Bed-  
ford Reformatory. He thought she was telling the truth  
when she told him that her name was Doris Walakowski.  
And one day he couldn't find her any more, and he looked  
high and he looked low, and finally, without going into  
boring details, he located her at Bedford Reformatory.



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118 And there she was using the name Walakowski. He had an awful job persuading the superintendent to admit that there was this Joyce Winston or Johnston, or whatever name you want to call her, there.

And when he found out that she was there he went to Albany to see the Superintendent of Prisons, because he wanted to see this girl with whom he was madly in love, and it was necessary for him to be fingerprinted before they would allow him to see her, and he went through that.

119 And then he sued out a writ of habeas corpus asking for her release, and he paid a lawyer to do it. And eventually, because she was ashamed, or for some unknown reason, this girl appeared on the day of the return of the writ in the court in Westchester County and said, "I am satisfied with being in jail, I don't want to be released." And his efforts to release her on that writ resulted in failure.

120 But, finally, she was released in December, and according to the terms of her parole she could not come back to New York City, but had to stay up in Canandaigua, New York, with her mother. Krulewitch visited her there several times. And he told the probation officer to whom this girl reported that he wanted to marry her, and he told this girl's mother that he wanted to marry her. He had this girl, this girl's brother and the mother down here and entertained them in New York and paid their expenses while they were down here, and he bought things for the family. You don't do those things for a girl whose earnings you want to live off, you do those things because you are in love and want to marry the girl.

In the early part of October, 1941, he was worried about this lung ailment of hers, and he and this girl Pauline Hillson, Rose Sookerman, talked it over, and Pauline said that

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she wanted to open a rooming house in Florida, and Krule- 121  
 witch also known as Kay—and that is his business name,  
 Alvin Kay—went down to Florida on business. He was in  
 the advertising business, as I told you, and he dealt in due  
 bills. You remember what due bills were. You paid a dis-  
 count and the hotels which were in bad shape in those days,  
 in order to induce you to come to their hotel would give the  
 agency these due bills, and you would get a \$5 room for \$3.50  
 or something like that. At any rate, he had to go to Florida,  
 and Pauline said, “Look around for me if you will and find  
 a rooming house;” and he went down and paid a deposit  
 on this rooming house, the El Chico Hotel, which was noth- 122  
 ing pretentious, just an ordinary rooming house, with 10  
 or 11 rooms, and he took the lease in her name and paid the  
 deposit to Cora Blumberg in the name of Pauline Hillson.

By the way, when he was down there he made inquiries  
 about other properties, because he said he wanted to settle  
 down there. He wanted to marry this girl and have her  
 settle down there with him, and when he came back he told  
 her all about it, and he says, “Now, you go down with Paul-  
 ine. I will pay her a few dollars a week for your room and  
 board, and you go on the beach, lie on the beach, and you 123  
 will recover from this lung ailment that you got.

And they did go down there. Kay did not go with them,  
 as Mr. Hilly said. They went down there to Miami, and she  
 did lie on the beach, and she did imbibe the sun, and accord-  
 ing to his directions, she did go to a doctor about this lung  
 ailment that she had, and that was the purpose for her going  
 down there, and that was the only purpose for her going  
 down there.

And on November 11th these girls are arrested for prosti-  
 tution, and when he finds out about it he went down there at

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124 once, and she said at the time, "I was doing nothing, and they arrested me for doing nothing." And she disclaimed that she had done anything like that to him, and then he found a note there for another man and this note said, "My husband is coming down. So don't get in touch with me for the next few days." And when he found that note he was furious and they had a regular fist fight. They hit each other. Both of them were insanely jealous of each other, and they had this regular fist fight, and she accused him of holding hands with some other girl, and he accused her of being untrue to him. And finally he decided that he  
 125 would call it quits, and he left and came back here and said he was all through.

On December 4th she came back and she stayed at his house just a few hours, and then went up to her home in Canandaigua.

Now, we get to a rather significant part of this testimony, ladies and gentlemen. Bear in mind that she came back to New York from Florida on December 4th. On December 4, 1941, she went up to Canandaigua, New York, to visit her mother. On December 6th Kay was arrested and charged with this crime.

126 The complaint originated not here but down in Florida but on the 6th, 7th and the 8th of December Kay was in jail here in New York. On December 8th this girl was arrested by a special agent of the Federal Bureau of Investigation, and he took a statement from her. On December 8th she had no chance whatever to get in touch with him and compare notes. On December 8th she was arrested and she completely exonerated Krulewitch of any complicity whatever on December 8, 1941.

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He still felt sorry for her, and he got her out on bail, and he paid the premium for the bail. On January 10th she came back to New York and she went down to the man who was then acting as Krulewitch's lawyer, and she voluntarily made a statement to him, and that statement will be shown to you, which contained an affidavit in which she said Kay had nothing whatever to do with any of these charges. 127

And on February 7th, Kay, whose case was then pending in Florida, his case was dismissed on February 27th. He was exonerated of any crime down there, and then when it was all over, he said to this girl, "Here's \$150." He says, "I don't want to see you any more. The district attorney told me to keep away from you," he says, "we're all through." And that, so far as Kay was concerned, was the end of his relationship with this girl. But, oh, no, the girl would not have that. He was through but she wasn't, and for four months she brooded and brooded, and finally she said, "I'm going to get something out of him," and one day she visited him with four men and she said, "You pay me \$1,000 or else," and he refused to pay her any money, and he made a report of this to the police department, and she was furious, and she broke the windows of his automobile, but he didn't give her a penny. 128

And then in August of 1942, far away from Kay's domination, out of his control entirely, if indeed he had any control over her at any time, she was arrested and convicted for prostitution. She was placed on probation, and the first shot out of the box was that she disregarded the mandates of the probation department and violated her parole and was rearrested. And by this time she was sick and tired of this constant hounding of the law that started back in 1932 and continued for those nine years, and she wanted the 129



*Motion.*

130 security that would come by the framing of Kay. She has had six years of that security, because whether the federal agents went to her or she went to them, I don't know, but at any rate, after she was re-arrested for violation of her parole she decided that she was going to put the finger on Kay, so to speak, and she told this story, this malicious, ill-conceived story, that she expects to repeat on the witness stand here.

And in January, 1943, as I recall, the grand jury indicted Kay, and it wasn't until the following May that she had Kay arrested for intimidation, and then admitted that she  
131 had framed him.

Whether her cooperation with the Government has given her the license to continue her life of ill fame I don't know, but the fact of the matter is that so far as we have been able to learn she has not been arrested for any crime from the date she told her story to the Federal Bureau of Investigation until today. Where she lives today I don't know. With whom she lives I don't know. What name she is going to give on the witness stand I don't know, but I leave you with this admonition, and I say it with all the sincerity with which I am capable: this girl is the only witness against this  
132 man who incriminates him. Look at her, study her, and make up your own minds as to whether she is telling the truth. That is all the defendant asks of you.

Thank you very much.

The Court: This court is in recess until 2:15.

(The following proceedings took place in the absence of the jury.)

Mr. Hilly: If your Honor please, I have one request to make at this time, and that is that the Government moves to have your Honor direct the United States Marshal to take



*Motion.*

the defendant Krulewitch into custody pending the determination of this case. 133

It has been the experience of the United States Attorney's office that once this case commences on this trial before a jury this defendant is not above attempting to contact and to persuade witnesses who he knows are going to testify for the Government to either disappear or change their testimony. As a matter of fact, one of the witnesses who will appear before your Honor is a witness who in the first case testified in favor of the defendant Krulewitch, but who in the second case testified in favor of the Government, and she will tell this Court and jury that the testimony in the first trial was given at the direction of the defendant Krulewitch. As a matter of fact, the testimony was written out for her by Krulewitch. 134

And in view of all of these facts, and in view of this man's attitude, we request that he be remanded to the custody of the marshal.

Mr. Todarelli: This request was made of Judge Moscovitz on precisely the same grounds which were urged. I know all about the witness about whom Mr. Hilly speaks, and I have spoken with her, and I assure your Honor on my oath as an officer of this court that there is not a word of truth to what Mr. Hilly says, that there was not any concoction whatever of the testimony, and that I know the story very well. That is number one. 135

For five and a half years this man has been at the beck and call of the Government; has always appeared in court; has been very faithful in his attendance, and, so far as I know, has never even been late once, and what Mr. Hilly is seeking to do is to impair his defense by putting him in jail so that we can't communicate with him during the trial.

*Motion.*

136/ There is not any justification whatever, your Honor, for this request. It was made at the last trial and Judge Moscovitz denied the motion of the Government.

The Court: For the time being I will deny the motion. However, Mr. Hilly, if you find that anything is happening which is out of the way, you are at liberty to make the motion then.

Mr. Hilly: Thank you. I will, your Honor.

The Court: And I assure you that I will deal with it peremptorily if anything happens.

137 Mr. Todarelli: Certainly. And if it is discovered I will certainly join in the motion.

(Recess to 2:15 P. M.)

Afternoon Session—2:15 P. M.

Mr. Hilly: If your Honor please, I have one special agent, Mr. Hoagland, who is sitting here at the table with me, and who will also be a witness in this case. I do not think there is any objection to having him sit here, is there?

Mr. Todarelli: No, your Honor, but may I ask that all other witnesses for both sides be excluded from the courtroom?

138 The Court: Yes, with the exception of the gentleman who is sitting at Mr. Hilly's table, all other witnesses in the case either for the Government or for the defendant will leave the courtroom.

Mr. Hilly: Elizabeth Sorrentino.

*E. M. Sorrentino, for Gov't, Direct.*

ELIZABETH MARY SORRENTINO, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 139

Direct Examination by Mr. Hilly:

Q. How old are you, Mrs. Sorrentino? A. 27.

Q. Will you keep your voice up, please? How old are you? A. 27.

Q. And are you married? A. Yes.

Q. And your marriage name is Sorrentino, is that right?

A. Yes.

Q. Are you living with your husband? A. No, I am not. 140

Q. You are separated from him? A. Yes.

Q. Now, are you known by any other name other than Elizabeth Sorrentino? A. Yes.

Q. By what other name or names are you known? A. Joyce Winters, Joyce Winston, Elizabeth Johnston, which is my maiden name, and Mrs. Curtis, and Kay.

Q. Are you also known as Mrs. Alvin Kay? A. Yes.

Q. Now, in 1937 were you arrested? A. Yes.

Q. Where were you arrested? A. In Buffalo.

Q. What was the charge that you were convicted of?

A. Wayward minor. 141

Q. What sentence did you receive? A. One to two years in Westfield State Farm, Bedford Hills.

Q. At Bedford Hills, New York? A. Yes.

Q. Now, in 1939 in New York City were you convicted of a crime? A. In 1939?

Q. Yes, in New York City? A. Yes.

Q. And what crime were you convicted of? A. Prostitution.

Q. And what disposition was made of your case? A.

*E. M. Sorrentino, for Gov't, Direct.*

142 They found out I was a parole violator and sent me back to Westfield State Farms.

Q. Now, on November 11, 1941, in Miami, Florida, were you convicted of a crime? A. Yes.

Q. What crime were you convicted of? A. Prostitution.

Q. And were you convicted, or did you plead guilty? A. We pleaded guilty.

Q. By "we" was there anyone else with you? A. Yes.

Q. Whom else was with you? A. This girl, Betty Gordon.

143 Q. Now, in July or August of 1942, in New York City, were you convicted of any crime? A. Yes.

Q. What crime were you convicted of? A. Prostitution.

Q. And what sentence did you receive? A. A year's probation.

Q. To go back for a moment, with respect to your conviction in Miami, Florida, what sentence did you receive?

A. Well, we received 15 days, but we paid a fine and we got out.

Q. Now, do you know a man by the name of Alvin Kay? A. Yes.

144 Q. And do you know him by any other name or names? A. Yes.

Q. By what other name or names do you know him? A. Ben Lewis, Ben Gordon.

Q. And do you know him also by the name of Alvin Krulewitch? A. Yes.

Q. And do you see him in court, Mrs. Sorrentino? A. Yes, I do.

Q. Where is he? A. Sitting over there (indicating).

Q. Where?



*E. M. Sorrentino, for Gov't, Direct.*

Mr. Todarelli: We will concede that the witness indicates the defendant. 145

Q. Now, do you know a woman by the name of Betty Gordon? A. Yes.

Q. Do you know her by any other name or names? A. Yes.

Q. By what other names or names do you know her? A. Pauline Hillson, Rose Sookerman, Betty Lewis, Betty Gordon.

Q. I show you this picture and ask you if you can identify that picture for me? A. Yes.

Q. Whom is that a picture of? A. This girl. 146

Q. What girl is that? A. Rose Sookerman, Betty Gordon, Pauline Hillson.

Mr. Hilly: I offer this in evidence, Mr. Todarelli.

Mr. Todarelli: I object to it on the ground that it has no binding effect whatever upon the defendant in this case.

The Court: It may be received in connection with the testimony of this witness.

Mr. Todarelli: I respectfully except.

The Court: Under the rules, Mr. Todarelli, it is not necessary for you to take your exception. 147

Mr. Todarelli: Thank you, your Honor. It is just force of habit.

(Marked Government's Exhibit 1.)

Q. Now, when did you first meet Alvin Kay or Alvin Krulewitch? A. 1939.

Q. What month was it, Mrs. Sorrentino? A. Oh, in June sometime.

Q. Would you just try to keep your voice up a bit, please.

Q. And where did you meet him? A. On Broadway.

*E. M. Sorrentino, for Gov't, Direct.*

148 Q. And after you met him, will you tell us what occurred? A. Well, I was either coming or going to a show, I don't remember, and he was in his car, and I, well, we got—we met that way. I got into his car and—

Q. Did he pick you up? A. Yes, he did.

Q. And after he picked you up what did you do, or what happened; where did you and he go? A. Well, we went out and had some coffee together, and then he took me to Coney Island, and then he left me in the movies and told me that he had to meet some friend of his and that he would pick me up outside of the movies at such a time, which I don't remember now.

149 Q. Did he pick you up? A. Yes.

Q. What was that, in the afternoon or was it at night? A. It was in the evening.

Q. When he picked you up was there anyone else with him? A. Yes, this girl Rose Sookerman.

Q. How were you picked up?

Mr. Todarelli: I object to that, your Honor.

Mr. Hilly: Question withdrawn.

Q. After you met him, where did you go? A. I don't know what you mean now.

150 Q. After he met you at the movie with this girl, where did you go with him? A. Well, we went out to eat, and we were talking, and then we went to their house.

Q. How did you go to their house? A. By his car.

Q. Where was his house located? A. 555 West 156th Street.

Q. Did you remain at that apartment that night? A. Yes, I did.

Q. Who else was in that apartment? A. Well, she was; Betty.

*E. M. Sorrentino, for Gov't, Direct.*

Q. Where was Krulewitch? A. He was there, too.

151

Q. Now, about a week after you met him, did anything occur? A. Yes. We went—

Mr. Todarelli: That is too indefinite, your Honor. I think that question ought to be rephrased—"Did anything occur?" I don't know what the witness is going to say.

Mr. Hilly: Very well.

Q. About a week after you met him, did you go to Chicago? A. Yes, I did.

Q. And how did you go to Chicago? A. By car.

Q. Who went to Chicago? A. Alvin Kay and myself.

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Q. Now, to go back to 156th Street, was there any other apartment on 156th Street that Krulewitch had at that time? A. Yes, there was.

Q. Where was that apartment located? A. It is on 156th Street, 515.

Q. Now with respect to the—

Mr. Todarelli: Will you fix the time of that.

Q. You discovered or you learned these facts at the time you met him; is that correct? A. Yes.

Q. And you met him, you say, in June, 1939? A. Yes.

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Q. With respect to the apartment at 515 West 156th Street, did you see the name on the letterbox for that particular apartment? A. Yes.

Q. What was the name? A. Lewis.

Q. With respect to the apartment at 555 West 156th Street, did you see the name on the letterbox at that apartment? A. Yes.

Q. And what was the name? A. Gordon.

Q. Now with respect to the trip to Chicago, did you give any money to Krulewitch before you left? A. Yes.

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154 Q. Now prior to your giving this money or prior to your getting this money, did you have a conversation with Krulewitch? A. Well, yes.

Q. And after this conversation with Krulewitch, what did you do? A. Well, this girl and I went out on the street and picked up men and made some money.

Q. Did you commit acts of prostitution to obtain that money? A. Yes.

Mr. Todarelli: I object to that and move that the answer be stricken from the record on the ground that it has nothing whatever to do with this case.

155 The Court: Objection overruled.

Q. Where did you stay in Chicago? A. Drake Hotel.

Q. Under what name were you registered? A. Kay.

Q. Mr. and Mrs.? A. Yes.

Q. While you were in Chicago did you and Krulewitch go about? A. Yes.

Q. And where did you go while in Chicago? A. Well, we went on the outskirts of town and took rides here and there, and places.

Q. Did you visit any particular place that you recall? A. Yes.

156 Q. What sort of place was it that you visited? A. A house of prostitution.

Mr. Todarelli: I object to that, your Honor. I move that the answer be stricken out.

The Court: Objection overruled.

Mr. Todarelli: It calls for a conclusion on her part.

The Court: Objection overruled.

Q. Did you meet anyone at this house? A. Yes.

Q. Whom did you meet? A. A woman.



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Q. Who was that woman? A. I don't know.

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Q. Do you know what her relationship was with respect to that house? A. Yes.

Mr. Todarelli: I object to that, your Honor.

The Court: What is your objection, Mr. Todarelli?

Mr. Todarelli: It calls for a conclusion on her part.

The Court: No, I don't think so.

Mr. Todarelli: All she can testify to is what she saw and what she heard.

The Court: Do you know whether or not this woman was an occupant of this house that you are talking about? 158

Mr. Hilly: His Honor is asking you a question.

The Court: Was this woman that you are talking about an occupant of this house that you are describing?

The Witness: Yes.

Mr. Todarelli: I do not object to "being an occupant of the house" at all.

Q. Do you know whether she was more than a mere occupant? A. Yes.

Mr. Todarelli: I object to that.

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A. (Continuing) She owned it.

The Court: Objection overruled.

Q. You said she was the owner of the house? A. Yes.

Q. Did Krulewitch have a conversation with this woman in your presence? A. Yes.

Q. Were you present for the entire conversation or for part of it? A. Part of it.

Q. Will you tell us as best you now recall what Krulewitch said and what the woman said?

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Mr. Todarelli: I object to it on the ground that it is not connected with the charge which we are facing here today; it is too remote in point of time. I call your Honor's attention to the fact that this trip took place sometime in June, 1939, and the indictment alleges the crime was committed in 1941.

The Court: I understand that. Objection overruled.

Mr. Todarelli: I respectfully except.

Q. Will you tell us what was said and by whom, as best you now recall? A. Well, he asked her if—well, he asked her if she needed a girl to work there in this house, if she could use me. And she said, well, I could stay there but the only way I could get out if he called for me at nights or something like that, otherwise I couldn't leave the premises.

Q. What did Krulewitch say to you? A. He asked me if I wanted to stay.

Q. And what did you say? A. No.

Q. Thereafter did you go back to New York City? A. Yes.

Q. And how did you go back, Mrs. Sorrentino? A. By Greyhound bus.

Q. Did Krulewitch go with you? A. No.

Q. Who paid for your ticket back to New York? A. Alvin Kay.

Q. Prior to your leaving Chicago did he do anything? A. What?

Mr. Todarelli: I don't know what that means, your Honor.

Mr. Hilly: I will make it more specific. I will withdraw it.

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Q. Was a telegram sent prior to your leaving Chicago? 163

Mr. Todarelli: I object to this leading of the witness.

The Court: Of course it is leading, but it was the only way he could elicit the information in view of your prior objection, Mr. Todarelli.

Mr. Todarelli: I know, your Honor, but there are other ways of eliciting information without leading the witness.

The Court: Very well. In my discretion I will permit the question.

Q. Would you answer the question. A. Yes. There was a telegram sent. 164

Q. To whom was that telegram sent?

Mr. Todarelli: I object to this, your Honor. I don't even know who sent the telegram.

Mr. Hilly: Mr. Todarelli is right. I will ask first, your Honor.

The Court: All right.

Mr. Hilly: I will withdraw the question.

Q. Who sent the telegram? A. Alvin Kay did.

Q. To whom was the telegram sent? A. To Rose Sookerman. 165

Q. When you returned to New York City did anyone meet you? A. Yes.

Q. Who met you? A. Rose Sookerman.

Q. When you returned to New York City, where did you go? A. Well, we went right back—we went to the movies and we went right up to the house again in 555 West 156th.

Mr. Todarelli: Your Honor, would you be good

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enough to ask the witness to speak more loudly? I find it difficult to hear.

The Court: Yes. If you can.

Q. Will you just keep your voice up, please. Do you know a woman by the name of Belle DeMarco? A. Yes.

Q. I show you this picture and ask you if you can identify that picture? A. Yes. That is Belle DeMarco.

Mr. Hilly: I will offer this in evidence, Mr. Todarelli (handing).

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Mr. Todarelli: I object to it on the ground that it has no bearing whatever on the charge we are facing.

The Court: It is received in connection with the testimony of the witness.

(Marked Government's Exhibit 2.)

Q. To go back for a moment to Chicago: You testified that Krulewitch asked this woman if you could work there, is that correct? A. Yes.

Q. What is your understanding of the words "work there"?

Mr. Todarelli: I object to that, your Honor.

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The Court: Well, I think we understand what was meant by it.

Mr. Hilly: Very well.

Q. When did you meet Belle DeMarco? A. Well, I met her through Alvin Kay and Betty.

Q. Were you introduced to her? A. Yes.

Q. Did you have any conversation with Kay as to what work Belle DeMarco did? A. Yes.

Q. Will you tell us this conversation? A. He said that she was a madame and a bookie for houses of prostitution.

Mr. Todarelli: Will you fix the date, please.



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Q. Can you place the time that you had this conversation, Mrs. Sorrentino? A. Well, before we went to see her. 169

Q. And can you tell us the month or the year that you first met Belle DeMarco? A. Well, it was in June, I am sure, or it could have been in July.

Q. Of what year was that? 1939? A. Yes.

Q. Now when you met Belle DeMarco did Krulewitch have any conversation with her? A. Yes.

Q. Were you present? A. At some of it.

Q. Will you tell us as best you now can recall what was said and who said it at that time, Mrs. Sorrentino? 170

Mr. Todarelli: Your Honor, in order that I may not be hopping up all the time may I have a running objection to all of these events that are so far, as I maintain, prior to 1941?

The Court: Yes. It may be so understood, and the record may show it, Mr. Todarelli.

Mr. Todarelli: Thank you.

Q. Will you tell us what was said at this conversation between Belle DeMarco and Krulewitch that you heard?

A. He asked her if she thought that I was a pretty girl and she said yes, and if she could use me, and she said yes, and I may start to work on the following Monday if I would give an examination from a doctor before going into the house to work. 171

Mr. Todarelli: Will you read that, Mr. Reporter, please?

(Answer read.)

Q. Now, did you overhear any conversation between Belle and Krulewitch with respect to Rose Sookerman?

A. Yes.

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172 Q. What was that conversation?

Mr. Todarelli: I object to this on the ground that it has nothing whatever to do with the case.

The Court: Overruled.

A. She says that she didn't think she could use Betty because Betty was too heavy and that only a thinner girl would do.

Mr. Todarelli: Your Honor, I ask that be stricken from the record on the ground that it is quite patently irrelevant and immaterial.

173 The Court: This is a conversation between the defendant and this other lady?

Mr. Hilly: That is right.

The Court: Which the witness overheard?

Mr. Hilly: Yes, your Honor..

The Court: Objection overruled.

Mr. Todarelli: It pertains to someone not on trial here.

Q. Now, did you go to work for Belle DeMarco? A. Yes, I did.

Q. And did you earn money while working for her? A. Yes.

174 Q. And that money that you earned while working for Belle DeMarco, what did you do with that? A. I gave it to Alvin Kay.

Q. Now, after you left Chicago how long was it before you saw Alvin Kay again? A. I think it was about a week.

Q. I did not hear you, Mrs. Sorrentino. A. I think it was about a week.

Q. Now, during that week did you receive a telephone call from Chicago? A. Yes.

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Q. And from whom was that telephone call? A. Alvin 175  
Kay.

Q. And did you have a conversation with him? A. I  
did.

Q. Will you tell us what was said at that time? A. He  
said he was having trouble with his car and that if Betty  
and I wouldn't give him the money, send it to him, so that  
he could have it repaired.

Q. And did you send him money? A. Yes.

Q. And where did you get this money that you sent  
him? A. Went out on the street and made it.

Q. Now, with respect to the apartments located at 555 176  
and 515 West 156th Street, did you practice prostitution  
in those houses? A. Yes.

Q. Was Kay present at any time when you brought  
men into those apartments? A. Yes, he was.

Q. And when he happened to be present when you  
brought men into those apartments what would he do?  
A. Sometimes he would walk out and sometimes he would  
go in another room and wait.

Q. Did you have a customer by the name of Rudolph?  
A. Yes.

Q. Did you have any conversation with Kay with re- 177  
spect to Rudolph? A. Yes.

Q. Will you tell us what was the conversation?

Mr. Todarelli: I object—

A. Rudolph—

Mr. Hilly: Just a minute, Mrs. Sorrentino.

Mr. Todarelli: I object to this on the ground  
that it has no bearing whatever upon this case.

The Court: Is this a conversation between the  
witness and the defendant in this case?

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Mr. Hilly: Yes, your Honor.

The Court: Overruled.

Mr. Podarelli: May we at least have the time fixed of this conversation, your Honor?

The Court: Well, Mr. Hilly can do that, yes.

Q. Do you recall when this conversation occurred between yourself and Krulewitch with respect to Rudolph?

A. I think it was in the evening, but I am not sure, because I don't remember the time.

Q. I see. Could you tell us the month or the year?

A. Yes, it was in the summertime, about August.

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Q. Of what year? A. 1939.

Mr. Pinto: We could not hear her.

Mr. Hilly: She said it was during the summertime, about August of 1939.

Mr. Pinto: I can't hear back here at all.

The Court: Can you speak a little louder?

Mr. Hilly: Just try and keep your voice up, please, Mrs. Sorrentino. Will you tell us this conversation with respect to Rudolph.

The Witness: Well, Rudolph—

180

Q. Keep your voice up, please. Try and talk to me, Mrs. Sorrentino. A. Rudolph was a good customer and he was a good spender, and he said that to be nice to him, to hang onto him, because he was a good spender, a good customer.

Q. Now, one night were you asleep at the apartment at 555 West 156th Street when Kay woke you up? A. Yes.

Q. Do you recall what month that was? A. No.

Q. Do you recall the year? A. 1939.

Q. Could you tell us whether it was during the summer?

A. Yes, it was.

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Q. At or about what time did he wake you up? A. It was about 5 o'clock in the morning, 4:30, 5, something like that. 181

Q. Will you tell us the conversation that occurred at that time? A. Well, there were two men, and they came in from Long Island or Jersey, I don't know which, and Betty answered the phone, and she told Alvin what it was, and he asked if I would go up there and take care of them.

Mr. Todarelli: Wait a minute. As I understand it, your Honor, this all took place before this witness was awakened by the defendant. She is talking about some telephone call that came in or something like that. 182

The Court: Well, if that is true, of course it is not admissible.

Mr. Todarelli: Well, that is what I gathered from her testimony.

The Court: I am not certain myself. You had better clear that up, Mr. Hilly.

Mr. Hilly: I will, your Honor.

Mr. Todarelli: Will you be good enough to read that, Mr. Reporter? 183

The Court: Read the question and the answer, too, Mr. Reporter, please.

(Question and answer read.)

Mr. Todarelli: I move that the answer be stricken out.

The Court: The question and answer both are stricken.

Q. When Alvin woke you up did you have a conversation with him? A. Yes.

Q. All right. Now, Mrs Sorrentino, will you tell us



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what was the conversation that you had at that time? A. He asked me to go out and take care of them.

Q. Did he tell you where they came from, what they were doing? A. Well, I know what they wanted to do, and he said where they came from, too, but I don't remember.

Mr. Todarelli: Your Honor, I move that the answer be stricken out as not responsive.

The Court: I think it is responsive.

Mr. Todarelli: The question is what did he say to her, and she started to answer by saying "I know." In other words, I think we ought to have only the conversation.

185

The Court: You are perfectly right on that, of course. Just relate, Mrs. Witness, the conversation that you had with the defendant at the time that he woke you up.

Q. Just tell us the conversation that you had, Mrs. Sorrentino. A. He asked me—he asked me if I would go up and take care of these two men.

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Q. And what did you say to him? A. I said I was very tired. He said it would not take long. So I put my coat on over my nightgown because it was only up the street away, and he asked Betty if she would go with me, and the both of us went out in the street in our nightdresses with our coats over them.

Q. And did you go to the apartment at 515? A. Yes.

Q. And you met the men at the apartment, is that right? A. Yes.

Q. And did you receive money from the men? A. Yes.

Q. And what happened with respect to the money that you received? A. I brought it back and gave it to Alvin Kay.

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Q. Now, in October of 1939, did you move from 555 187  
156th Street up to 174th Street? A. Yes.

Q. And who rented the apartment at 174th Street? A.  
Why, Alvin Kay did.

Q. And under what name was the apartment rented? A.  
What?

Q. Under what name was the apartment rented? A.  
I think it was Gordon.

Mr. Todarelli: I beg your pardon?

The Witness: Gordon.

Mr. Todarelli: Will you read that, Mr. Reporter.  
(Answer read.) 188

Mr. Todarelli: Thank you.

Q. For a period of time after you moved to 174th Street  
did you continue to use the apartment at 515 156th Street?

A. No, we had to move. The agent told us to move.

Q. The agent told you to move? A. Yes.

Q. Whom did he tell to move?

Mr. Todarelli: Now, your Honor, I object to this,  
and I move that the answer be stricken out to the  
preceding question where she said the agent told her  
to move.

Mr. Hilly: No, she did not say told her, but told  
"us." 189

The Court: The answer may stand.

Mr. Todarelli: Sir?

The Court: The answer may stand.

Q. Whom did he tell to move? A. Told Betty and my-  
self.

Mr. Todarelli: I renew my objection and move to  
strike out the answer.

The Court: The motion is overruled.

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190 Q. Was an apartment rented up on 171st Street? A. Yes.

Q. Now, in this apartment on 171st Street in October of 1939, were you arrested? A. Yes.

Q. And was Betty Sookerman arrested? A. Yes.

Q. And at the time of your arrest, were there men in the apartment? A. Yes.

Q. And who made the arrest? A. Two detectives.

Q. And were you convicted of any crime as a result of this arrest? A. Yes.

191 Q. And what crime were you convicted of? A. Prostitution.

Q. And were you sent to prison? A. Yes.

Q. And to what prison was that? A. I was sent back to Bedford Hills Reformatory.

Q. Pardon me? A. I was sent back to Bedford Hills Reformatory.

Q. As a parole violator? A. As a parole violator.

Q. Now, during the time that you were in Bedford, or in Westfield State Farms, did Krulewitch do anything? A. Yes.

192 Q. What did he do? A. He came to visit me and tried to take me out on a writ.

Q. Tried to take you out on a writ? A. Yes.

Q. Now, when that writ came into court for argument, did you advise the Court with respect to anything? A. Yes. I said that—

Q. Keep your voice up, please. A. I said I didn't want to see him; that I didn't ask him to come to help.

Q. Now, on the day the writ was served, were you coming up for release?

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Mr. Todarelli: Your Honor, I do not see what this has to do with the defendant. 193

The Court: Is there any objection?

Mr. Todarelli: Yes.

The Court: Overruled.

Q. Mr. Sorrentino, at or about the time the writ was served on the institution, was there any disposition being made with respect to you by the institution? A. Yes, I was to be paroled in the care of my mother.

Q. And the writ then was concerning your parole, is that right? A. That is right.

Mr. Todarelli: I object to this, your Honor. 194

The Court: I think your objection is well taken to that question, Mr. Todarelli, and the answer may be stricken.

Q. When the writ was served on the institution, did that affect, if you know, your release?

Mr. Todarelli: I object to that, your Honor.

The Court: What is the objection?

Mr. Todarelli: Immaterial and irrelevant, and how can that be binding in any respect upon the defendant?

The Court: I presume it is because the defendant proposed the proposition that you are offering this testimony as to this writ, is that right? 195

Mr. Hilly: Yes, your Honor.

The Court: It has already appeared that the defendant brought the writ, or brought the petition to have her released.

Mr. Todarelli: I do not see what that has to do with this case.

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Mr. Hilly: If your Honor please, there is another further reason why this is very material. In view of the statements that were made this morning by Mr. Todarelli in his opening statement, he attributed one reason for this action that this lady took with respect to that writ, and I want to show what the real fact was.

The Court: The objection is overruled, and you may have an exception, Mr. Todarelli.

Read the question, Mr. Reporter.

(Question read.)

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Mr. Todarelli: You see, your Honor, she is being asked for the operation of the mind of somebody in the institution who had to do with the parole.

The Court: No. It has already appeared that if the writ had been granted it would have prevented her release, is that right, Mr. Hilly?

Mr. Todarelli: It can't be. If the writ was granted she would have been released immediately.

The Court: That would be my understanding of it, yes, but—

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Mr. Todarelli: Certainly.

The Court: —but that is not my understanding of the testimony. Now, what do you want to show, Mr. Hilly?

Mr. Hilly: I want to show through this witness, your Honor, that the writ, the serving of the writ, delayed her release from the institution.

The Court: That is what I had in mind.

Mr. Todarelli: Yes. And even that, your Honor, how can this witness testify as to the legal effect of the service of a writ, and as to any effect whatever



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that it would have upon the authorities of the institution who would ultimately exercise their discretion? How could it possibly have?

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The Court: If the witness knows she may answer.

Mr. Todarelli: How can she know, your Honor?

The Court: Well, don't ask me, Mr. Todarelli. I don't know how she could know.

Q. Do you know whether this service of this writ on the institution delayed your parole? A. Yes, it did.

Q. How long a period of time did you serve in Westfield State Farms when you returned as a parole violator?

A. A year and a month and a week and a day.

200

Q. Now, when were you released from Westfield State Farms? A. I think it was two days before Christmas.

Q. And that was in 1940, is that correct? A. That is right.

Q. And after your release where did you go? A. I went to my mother's house upstate.

Q. And did anyone visit you while you were upstate with your mother? A. Yes.

Q. Who visited you? A. Alvin Kay.

Q. On how many occasions did he visit you? A. I think it was three or four anyway.

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Q. And did you return to New York City? A. Yes.

Q. And when did you return to New York City? A. In March.

Q. In March of 1941, is that correct? A. Yes.

Q. And where did you go to live on your return from New York City? A. With Alvin Kay.

Q. And where did you go to live? I am speaking now with respect to the address of the apartment. A. 325 East 77th Street.

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202 Q. And when you went back to live with him did you do any work? A. Yes.

Q. And where did you work? A. Well, he had some cider stubes and I went to work in those.

Q. And where were these cider stubes located? A. Well, the head one on 85th Street, and he had three or four of them on the Avenue, on Second Avenue up towards 88th Street.

The Court: Mr. Hilly, where I come from we do not have cider stubes. I would like to know what one of these things is.

203 Mr. Hilly: Very well, your Honor.

Q. Will you tell me, or tell us, Mrs. Sorrentino, what is a cider stube? A. Well, it is a center for a house of prostitution.

Mr. Todarelli: I object to that, your Honor. It is a conclusion on her part. A cider stube, by the way, your Honor—

Mr. Hilly: If your Honor please, I object to any statement by Mr. Todarelli as to what a cider stube is.

204 Mr. Todarelli: I am trying to inform his Honor as he comes from Vermont, as to what a cider stube generally is.

The Court: I would like to know.

Mr. Todarelli: I do not mean the ones in this case. I mean generally speaking.

Mr. Hilly: Oh, generally speaking, all right.

Mr. Todarelli: Up around Yorkville, and I think they are more prevalent in Yorkville than anywhere else, your Honor, a cider stube is place where you buy only soft drinks, and cider. They have juke

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boxes in them, and I do not think they sell hard liquor, although I may be mistaken. They are licensed by the City of New York. 205

The Court: Very well.

Mr. Todarelli: That is generally speaking.

Q. Now, in the cider stubes that Kay or Krulewitch owned, did they sell soft drinks? A. Yes.

Q. And did they have booths? A. Yes.

Q. And did you work selling soft drinks in these cider stubes? A. Yes.

Q. Now, in addition to selling soft drinks in these cider stubes did you do anything else? A. Yes. 206

Q. What else did you do? A. I committed acts of prostitution.

Q. And you received money for it, is that right? A. Yes.

Q. Now at about what time would you commence to work? A. Well, sometimes 11 o'clock in the morning. I would get up and go to the store at 81st Street, and I would work there sometimes until 11 o'clock at night, maybe 12, and then I would go on the Avenue, and if he was short of work in one of his other stores I would go in there and work, too, for maybe a couple of hours, two or three hours. 207

Q. Now, you say you would go to the store on 81st Street. Who owned that store? A. Rose Sookerman, Betty.

Q. Had the title to that store been in anyone else's name?

Mr. Todarelli: I object to that, your Honor.

The Court: Objection sustained.

Mr. Hilly: Question withdrawn.

Q. Let me ask you this question. Do you recall when that store was purchased? A. Which one?

Q. The one on 81st Street.

Mr. Todarelli: By whom?

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A. Well, he had three of them at one time on 81st Street.

Q. Was there a place on 81st Street by the name of Bloomgarten's? A. Yes.

Q. Do you recall when Bloomgarten's was purchased? A. No.

Q. Was it ever in your name? A. No. There was another one in my name on 81st Street.

Q. What was the name of that? A. The International.

Q. Did you put up the money for the purchase of that store? A. No, I didn't.

Q. But it was purchased in your name? A. Yes.

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Q. When you went to Bedford was the ownership changed from your name? A. Well, I don't know, you see, if they sold it or what?

Mr. Todarelli: What is the answer, please?

(Answer read.)

Q. Now, how much money would you earn every day that you worked? A. Well, it varied.

Q. Could you tell us an average amount of money that you generally earned? A. Sometimes forty, fifty; it all depends.

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Q. Were there days when you had a bad day? A. Yes.

Q. Now with respect to the money that you earned, what did you do with it? A. I gave it to him, Alvin Kay.

Q. And when you had a bad day would you have a conversation with Kay? A. Yes.

Mr. Todarelli: I object to that. That is too general. It covers too much ground.

The Court: Objection overruled.

Q. Will you tell us the conversation that you would have with him when you had this bad day? A. He said, "You are not trying." He says, "You can do better than that."

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Q. Now, did you work continuously in the cider stales or were there occasions when you and Kay went off on trips? A. Yes, there was a couple of occasions. 211

Mr. Todarelli: Would your Honor ask the witness if she will move her chair up a little further toward us.

The Court: A long time ago, Mr. Todarelli I stopped trying to get witnesses to talk up so that people could hear them. I just gave up. It can't be done. The men are just as bad as the women.

(To the witness): If you can, speak a little louder.

Mr. Pinto: Can't the marshal move her chair just a foot or two? That would help out very substantially, I think. 212

The Court: Yes.

Mr. Pinto: You see, she is putting the chair back toward the bench instead of putting it out, so that he voice will carry out towards us.

The Clerk: You can't get it any closer than that.

The Court: Try it that way. Go ahead.

Q. Now, in May, 1941, did you and Kay or Krulewitch go to Florida? A. When?

Q. In May, 1941? A. Yes. 213

Q. Let me direct your attention to the early part of October of 1941. At that time did Kay go to Florida? A. Yes.

Q. And about how long a period was he gone? A. I think about a week.

Q. And upon his return from Florida did you have a conversation with him? A. Yes.

Q. And was Rose Sookerman present? A. Yes.



*E. M. Sorrentino, for Gov't, Direct.*

214 Q. Now, will you tell us as best you now recall what was the conversation which you and Rose Sookerman had with Kay upon his return from Florida? A. Well, he said he had purchased this hotel and that he had paid a man \$1,000, I think that was the amount he mentioned, but some amount for a connection for his girls to work in this place that he had gotten, leased or something, or rented; and he said it would be best for us to go there to work and that to get rid of the Bloomingarten cider stube, and to go down there. And he said we would be better off down there.

Q. Did he tell you the name of the place he had rented in  
215 Miami? A. Yes.

Q. What was the name? A. El Chico.

Q. Did you go to Florida? A. Yes.

Q. Now with respect to the day you left to go to Florida, did you go down to Pennsylvania station any day previous to the day you left? A. Yes, we did.

Q. How long, or how many days before you left, did you go down to the Pennsylvania Station? A. I think it was the day before.

Q. What occurred at Pennsylvania Station when you went down for the first time? A. We checked our baggage.

216 Q. Now do you recall the date that you actually went or actually left for Miami, Florida? A. It was the latter part of October; I don't know the date.

Q. Who went to Miami, Florida? A. The three of us went.

Q. From what apartment or from what address did you leave to go to Pennsylvania Station? A. 325 77th.

Q. Who left from that address? A. What?

Q. Who left from that address? A. The three of us.

Q. By the three of you, whom do you mean? A. Alvin Kay and Rose Sookerman and myself.

*E. M. Sorrentino, for Gov't, Direct.*

Q. As you were leaving the apartment house did you 217  
have a conversation with anyone? A. Yes, we did.

Q. And with whom did you have a conversation? A.  
With a young fellow by the name of Johnnie Dolan that  
works there as an elevator man or in the lobby or some-  
thing.

Q. Who was present at that time? A. Alvin Kay and  
Betty and myself.

Q. Who had the conversation with Dolan? A. Alvin  
Kay.

Q. Did you hear the conversation? A. Yes, I did.

Q. What was said? A. He said we were going to 218  
Florida.

Q. How did you go down to Pennsylvania Station? A.  
Why, by car.

Q. Whose car? A. His car.

Q. When you got downtown what if anything was done  
with the car? A. It was put in the parking lot near the  
Pennsylvania Station.

Q. Did you board a train at Pennsylvania Station? A.  
Yes.

Q. And did all three of you get on the train? A. Yes, 219  
we did.

Q. Did you go directly to Florida? A. No, we didn't.

Q. Was there a stop made on the way? A. Yes.

Q. Where was the stop made? A. Baltimore.

Q. Was there any conversation with Kay as to why it  
was necessary to make the stop in Baltimore? A. Yes; he  
wanted to purchase some furniture for this hotel, and his  
uncle—he wanted to see his uncle who owned the business.

Q. Did you get off at Baltimore? A. Yes.

Q. All three of you? A. Yes.

220

Q. After you got off at Baltimore, will you tell us what happened? A. Well, he went to see his uncle, and Betty and I stayed around outside; he told us to wait outside. And we had a dog with us, and we walked the dog around, and ate, and just waited for him to come out.

Q. Did Kay rejoin you after that? A. Yes.

Q. After he rejoined you what occurred? A. Well, he had some coffee with us girls, and then we checked the dog, and then we started on to Miami.

Q. Did you have a reservation or were you in the coaches? A. In the coaches.

221

Q. When did you arrive in Miami? A. Well, the following noon, I think.

Q. When you arrived in Miami, what did you do? A. Well, we got into a cab and went right over to the hotel.

Q. You say this trip to Miami occurred in the latter part of October, is that correct; when you went down to Miami it was the latter part of October? A. Yes.

Q. Do you recall the year? A. '41, wasn't it? I think. Yes. '41.

Q. I show you this picture and ask you if you can tell me what that is. A. That is the El Chico Hotel.

222

Q. That is a picture of the El Chico Hotel? A. Yes. Mr. Hilly: Would you mark this for identification? (Marked Government's Exhibit 3 for identification.)

Q. Now at this time how long did Kay remain in Miami? A. A week. About a week.

Q. And what occurred during that week that Kay remained in Miami? A. Well, he helped us girls fix the place up, and helped us hang up our curtains, and went and look-

*E. M. Sarrentino, for Gov't, Direct.*

ed for a maid, and had a telephone put in, and things like that about, you know, the house.

223

The Court: We will take an afternoon recess now.  
(Short recess.)

By Mr. Hilly:

Q. Now during the period of the first week in Florida did anything occur in connection with the furniture at the El Chico Hotel? A. I don't know what you mean by that.

Q. During the first week, the week of your arrival down there, was anything done or attempted to be done with the furniture? A. Of the hotel?

Q. Of the El Chico Hotel. A. I knew he tried to throw a few pieces of it out.

224

Q. Who tried to throw a few pieces? A. Alvin.

Q. Did anyone come there at that time? A. Yes. A woman that was the owner of the building.

Q. Did Kay have a car while he was in Florida? A. Yes.

Q. Was it his car or did he rent it? A. No; he rented it.

Q. Do you know the man from whom he rented that car? A. Yes.

225

Q. What was his name? A. Leo.

Q. Do you know his last name? A. No, I don't.

Q. During the week that Kay was there did you practice prostitution? A. No.

Q. During that same week did Rose Sookerman practice prostitution?

Mr. Todarelli: I object to that.

The Court: What is the objection?

Mr. Todarelli: On the ground that it is immaterial

*E. M. Sorrentino, for Gov't, Direct.*

226

and irrelevant. The defendant is not charged with having transported Rose for that purpose at all.

The Court: I will permit it.

Mr. Todarelli: Another thing: Of course if this witness knows. That is another point in my objection.

The Court: That of course is true.

Mr. Hilly: I will withdraw the question and rephrase it, your Honor.

227

Q. Do you know if Rose Sookerman practiced prostitution during the week that Kay was there? A. Yes, she did.

Q. Now, after Kay left did you practice prostitution? A. Yes.

Q. Do you know if Rose Sookerman practiced prostitution? A. Yes, she did, too.

Q. Now for how long a period of time did you practice prostitution at the El Chico Hotel? A. I am not sure of the time, but it could have been two weeks. I don't know; a week or two weeks.

228

Q. After you had been doing that for about two weeks, what happened? A. We were arrested.

Q. Were both of you arrested? A. Yes, we were.

Q. And did you plead guilty? A. Yes.

Q. By whom were you arrested? A. By whom?

Q. By whom were both you and Rose Sookerman arrested? A. By detectives.

Q. And I think you previously testified that you received a sentence of 15 days? A. Yes.

Q. And later you paid a fine? A. That is right.

Q. Did you serve the 15 days? A. No.



*E. M. Sorrentino, for Gov't, Direct.*

Q. Upon your arrest was a telegram sent by anyone? 229

A. Yes.

Q. Who sent the telegram? A. Rose.

Q. And to whom was it sent? A. Alvin Kay.

Q. Now with respect to the time of your arrest, how long after that was it before you saw Kay? A. Before Thanksgiving.

Q. Where did you see him? A. In Miami.

Q. Did he have a car with him at this time? A. No.

Q. Did he rent a car? A. Yes.

Q. And from whom, if you know, did he rent this car?

A. From the same man, Leo. 230

Q. When he came down to Florida this time—you say this was before Thanksgiving of November, 1941, is that right? A. That is right.

Q. When he came down to Miami at that time, what if anything did he do?

Mr. Todarelli: Before—I am sorry.

The Court: Well, it is rather vague.

Mr. Hilly: I am sorry, your Honor.

Q. When you saw him in Miami before Thanksgiving of November of 1941, did you and Rose and he do anything?

A. Oh. Well, do anything? 231

Q. Did he take you anywhere? A. Oh, yes, of course. Well, being that the place was, you know, raided and so on, he took us to several houses there, because it is open, you know, to get us another place, and we went and got into another place by the name of Lil's.

Q. The money that you received while you were working at the El Chico Hotel, what was done with that? A. Well, Betty, I always turned it in to Betty and she put it in a box, and, you know, it was in the closet.

*E. M. Sorrentino, for Gov., Direct.*

232

Q. When you were working in Lil's what was done with that money? A. Well, I didn't collect any of it; Betty did.

Q. Do you know what happened to the money that was placed in the box? A. Yes. Alvin when he came Thanksgiving he took most of it out and left her some to take care of things.

Q. Before Kay's return to Miami in November of 1941, did he call you at the El Chico Hotel? A. Before his visit?

Q. Yes. Before he returned? A. Yes, he did.

233

Q. How often would he call you? A. Well, I don't remember. A few times.

Q. Were the telephone calls made from the El Chico? A. Yes.

Q. Were the charges reversed? A. Yes, they were.

Q. And did you receive any letters from him— A. Yes.

Q. —while you were down at Miami? A. Yes, I did.

Q. Will you look at this letter—

Mr. Todarelli: Will you mark it for identification?

234

Mr. Hilly: Yes, I will mark it, Mr. Todarelli.

Q. I ask you, is that a letter that you received? A. Yes.

Q. Keep your voice up, please. A. Yes.

Q. In whose handwriting is it? A. His handwriting.

Q. And did you receive it before or after you were arrested in Miami? A. Before we were arrested.

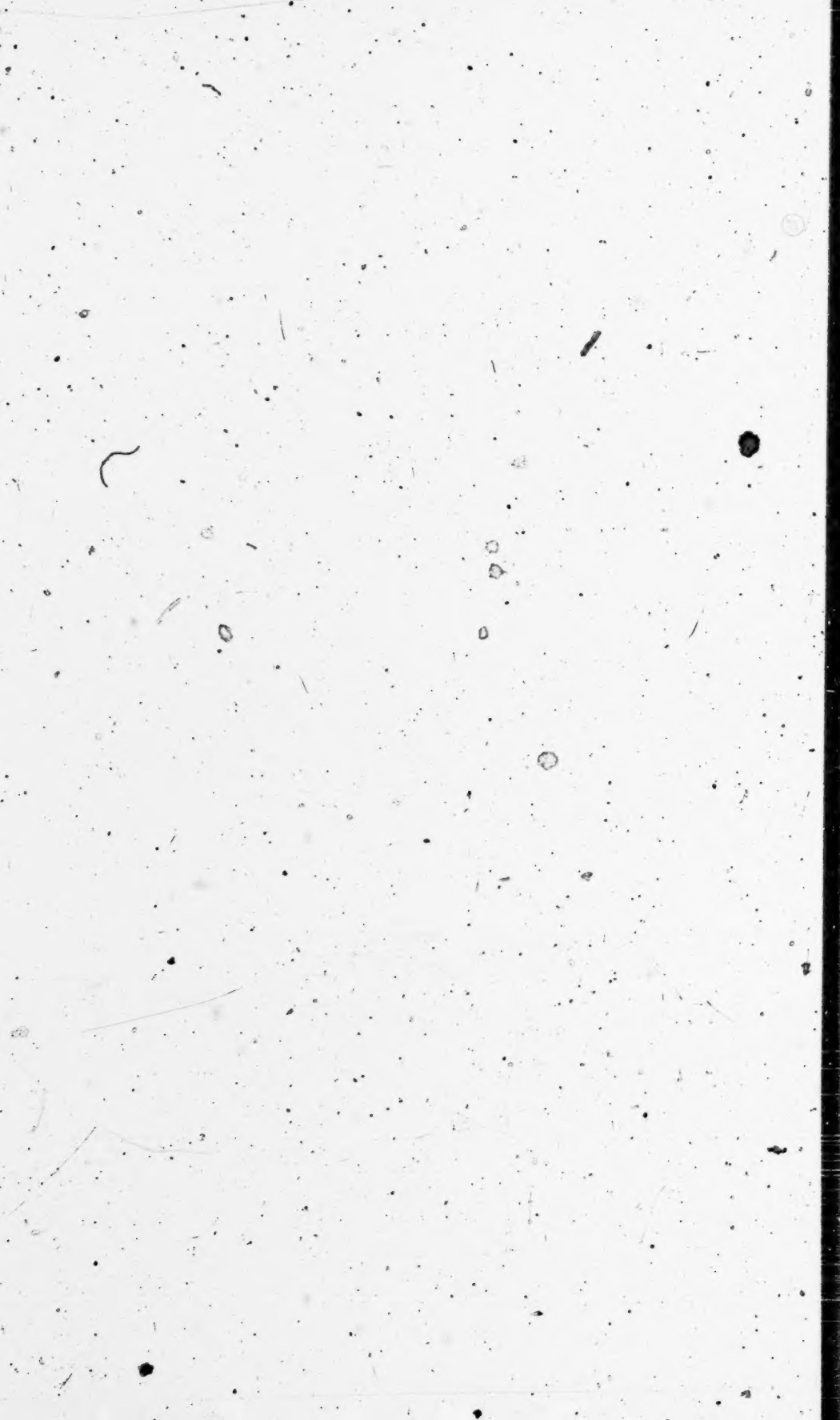
Q. And it came through the mails? A. That is right.

Q. Addressed to you? A. That is right.

Mr. Hilly: Would you mark it for identification?

(Marked Government's Exhibit 4 for identification.)





*E. M. Sorrentino, for Gov't, Direct.*

Mr. Hilly: I offer it in evidence.

235

Mr. Todarelli: May we come up to see you, your Honor?

The Court: Yes.

(Conference at the bench between Court and counsel, off the record, not within the hearing of the jury.)

The Court: The jury is now excused until next Monday morning at 10:30, because there are questions of law to be taken up now that will not concern the jury.

I suggest that you do not discuss the case, or form any opinion on it until all of the evidence is in, and you have heard the arguments of counsel and the charge of the Court.

236

You are now excused until next Monday morning at 10:30.

The Court will remain in session, however.

(The jury retired from the court room.)

(Adjourned to Thursday, April 10, 1947, at 10:30 o'clock a. m.)

Hearing on Search and Seizure took place here—Defts. Ex. B 1, B 2 and decision of Judge.

237



# **Motion for Order Cancelling Bonds.**

238

## **Defendant's Exhibit A1.**

Search &amp; Seiz.

IN THE UNITED STATES DISTRICT COURT.

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA.

UNITED STATES OF AMERICA,

vs.

ELIZABETH MARY JOHNSTON, arrested as JOYCE WINSTON, and ALVIN KRULEWITCH; alias ALVIN KAY

239

To the Honorable Judges of the above named Court:

Now comes Elizabeth Mary Johnston and Alvin Kay by their attorneys, Gramling & Gramling, and respectfully represents unto the court as follows:

240

On or about December 8, 1941, Alvin Kay was arrested in the City of New York and executed an appearance bond in the sum of One Thousand Dollars with Continental Casualty Company, as surety, conditioned that the said Alvin Kay appear before the United States District Attorney for the Southern District of Florida whenever requested; that Elizabeth Mary Johnston was arrested under the name of Joyce Winston and later on December 20, 1941, executed a bond in the sum of One Thousand Dollars, with the United States Fidelity Guarantee Company, as surety; conditioned that the said Elizabeth Mary Johnston be and appear before the United States District Court for the

*Motion for Order Cancelling Bonds.*

Southern District of Florida on February 8, 1942, and from time to time, etc.

241

The said Alvin Kay and Elizabeth Mary Johnston were on or about February 8, 1942, advised that there would be no further prosecutions in the cause. Upon the adjournment of the Grand Jury in February, 1942, the United States Assistant District Attorney issued a certificate that there would be no prosecutions, as aforesaid, against the said defendants, in order that the bonds might be cancelled. (Certificate attached hereto and made a part hereof). However, the bond companies require an order of Court, cancelling the bonds, before they will return to the defendants securities deposited with said surety companies.

242

Alvin Kay, respectfully represents that the offices of the Federal Bureau of Investigation took from his apartment, without a warrant of any nature whatsoever, certain letters and other paper writings, some of which were returned to him and some of which are now in the possession of the United States District Attorney for the Southern District of Florida, so your petitioner is advised.

Now therefore, the said Alvin Kay moves the Court for an order cancelling that certain appearance bond dated December 8, 1941, wherein Alvin Kay, is principal and Continental Casualty Company, is surety, conditioned that the said Alvin Krulewitch alias Alvin Kay, appear before the United States District Attorney for the Southern District of Florida whenever requested, and which said bond is now held by the Clerk of this Court, be cancelled and that the Clerk of this Court be directed to mark upon the bond "Cancelled by order of Court".

243

*Motion for Order Cancelling Bonds.*

244 And further that the United States District Attorney be authorized to return to the said Alvin Kay any letters or other papers now in the District Attorneys' possession, which were taken from the apartment of the said Alvin Kay.

245 The said defendant, Elizabeth Mary Johnston, moves the Court for an order cancelling that certain bond dated December 20, 1941, wherein the said Elizabeth Mary Johnston, as principal and United States Fidelity Guarantee Company, as surety; conditioned that the said Elizabeth Johnston be and appear before the United States District Court for the Southern District of Florida, February 8, 1942, and from time to time thereafter, etc.; and further order the Clerk of this Court mark upon the said bond "Cancelled by order of Court".

Said defendants move the Court for an order that this Motion and the Order of this Court be filed by the Clerk of this Court, without cost to the said defendants.

Respectfully,

GRAMLING & GRAMLING,  
Attorneys for the defendants,  
Elizabeth Mary Johnston and  
Alvin Kay.

By JOHN GRAMLING.

246 I will not offer objections to the entry of the order prayed for in the foregoing petition.

(Signed) GEORGE A. SMATHERS.

GEORGE A. SMATHERS,  
Assistant U. S. Attorney.

*Motion for Order Cancelling Bonds.*

DEPARTMENT OF JUSTICE.

247

UNITED STATES ATTORNEY.

Southern District of Florida.

Miami, Feb. 27, 1942.

## TO WHOM IT MAY CONCERN:

This is to advise that the undersigned has closed without prosecution the criminal charges against Alvin Kay, wa. and Joyce Winston, w. a. and the appearance bonds given by the aforesaid may be released and cancelled.

(Signed) GEORGE A. SMATHERS.

248

GEORGE A. SMATHERS,  
Assistant U. S. Attorney.

(S-b)

All of which we have caused by these presents to be exemplified, and the seal of the said District Court to be hereunto affixed.

Witness the Honorable John W. Holland, Judge of the District Court of the United States for the Southern District of Florida, at the City of Miami, in the said district, this 30th day of December, in the year of our Lord 1942 and of the Independence of the United States One Hundred and Sixty-seventh.

249

EDWIN R. WILLIAMS,  
Clerk U. S. District Court,  
Southern District of Florida.

*Motion for Order Cancelling Bonds.*

250 United States of America,  
Southern District of Florida.

I, JOHN W. HOLLAND, one of the Judges of the District Court of the United States for the Southern District of Florida, do hereby certify that Edwin R. Williams, whose name is subscribed to the preceding exemplification, is the Clerk of the said District Court, duly appointed and sworn and that full faith and credit are due to his official act.

I further certify that the seal affixed to the said exemplification ~~is the seal of the said District Court and that the~~ attestation thereof is in due form of law.

251 Dated at Miami, this 31st day of December, A. D. 1942.

JOHN W. HOLLAND,  
United States District Judge.

United States of America,  
Southern District of Florida.

252 I, EDWIN R. WILLIAMS, Clerk of the District Court of the United States for the Southern District of Florida, do hereby Certify that Honorable John W. Holland, whose name is subscribed to the preceding certificate, is one of the Judges of the District Court of the United States for the Southern District of Florida, duly appointed and sworn and that the signature of said Judge to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at the City of Jacksonville in the Southern District of Florida, this 30th day of December A. D. 1942.

EDWIN R. WILLIAMS,  
Clerk of the United States District Court,  
Southern District of Florida.



## Order Cancelling Bonds.

Defendant's Exhibit A 2.

253

Search & Seiz.

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA.

UNITED STATES OF AMERICA:

vs.

ELIZABETH MARY JOHNSTON,  
arrested as JOYCE WINSTON,  
and ALVIN KRULEWITCH, alias  
ALVIN KAY.

254

This cause coming on to be heard upon the petition of Elizabeth Mary Johnston, and Alvin Kay, by their attorney Gremling & Gremling, and the Court being advised in the premises, now therefore:

IT IS ORDERED that the appearance bond executed December 8, 1941, by Alvin Kay or Alvin Krulewitch, as principal, and the Continental Casualty Company, as surety; conditioned that the said Alvin Kay appear before the United States District Attorney for the Southern District of Florida, which said bond is now in the possession of the Clerk of this Court, be and the same is hereby cancelled and the Clerk is directed to mark upon the said bond "Cancelled by order of Court."

255

IT IS FURTHER ORDERED that the appearance bond executed December 20, 1941, by Elizabeth Mary Johnston, or Joyce Winston, as principal, and the United States Fidelity Guarantee Company, as surety; conditioned that the

*Order Cancelling Bonds.*

256 said Elizabeth Mary Johnston appear before the United States District Attorney for the Southern District of Florida, which said bond is now in the possession of the Clerk of this Court, be and the same is hereby cancelled and the Clerk is directed to mark upon the said bond "Cancelled by order of Court."

IT IS FURTHER ORDERED that the United States District Attorney be and is hereby authorized to return to Alvin Kay any papers in his possession which is the property of Alvin Kay and taken from his apartment as referred to in the petition for this order.

257 IT IS FURTHER ORDERED that the petition or motion of Elizabeth Mary Johnston and Alvin Kay for this order, together with this order, be filed by the Clerk of this Court, without cost to the said petitioners or movants.

DONE AND ORDERED in Miami, Florida, this 21st day of March, A. D., 1942.

JOHN W. HOLLAND,  
Judge.

258 Attest a True Copy.

Edwin R. Williams, Clerk,  
U. S. District Court,  
Southern District of Florida.

Margaret T. Erscker,  
Deputy Clerk.

## FROM MINUTES OF SEARCH AND SEIZURE,

PAGE 70.

259

Cross Examination of PAULINE BAKER KRULEWITCH:

Q. Where are you living now?

The Witness: Do I have to answer that?

The Court: There is no reason why you should not.

A. 26 East 91st Street.

Q. Is that where Mr. Krulewitch is living too? A. Yes.

Q. You are living together? A. Yes.

260

Mr. Hilly: I have no further questions.

261

*Agent Hoagland for Gov't, Cross.*

262 CROSS EXAMINATION OF AGENT HOAGLAND  
during Search and Seizure Hearing:

Q. When you five agents arrived there what was the first thing you did, Mr. Hoaglund? A. The first thing we did it examine the nameplate on the door and then entered sort of a vestibule of the apartment building, and my recollection is that the door into the apartment lobby was open. We all five went in and went to apartment 1-J, which, as you enter the lobby, go straight ahead a few paces and then turn left and up a few steps and it is down to the left at the end of that hall. We saw the apartment, that is from the hall, the outside. At that point two of us were designated to cover the rear and the side. Agent Rooney and I then left the other three agents and went outside to the side and the rear and took up the positions as I stated.

Q. Up to that point you have given us to the best of your recollection exactly what transpired from the moment you arrived at 325 East 77th Street on that day; is that right? A. Up to that point, yes, sir.

Q. You didn't go downstairs to talk to the superintendent did you? A. I did not talk to the—go downstairs to talk to the superintendent, no, sir.

Q. Now did you go with anyone else and talk to the superintendent; am I right? A. No; I did not.

Q. Did you sign an affidavit on March 3, 1943, and I show you a photostat and ask you if that is your signature or a facsimile of it? A. Yes, that is my signature.

Q. Did you say the following in the affidavit: "On December 6, 1941, I accompanied Special Agents Rumans, Lambdton, Rooney and Little to the premises 325 East 77th Street. After Special Agent Rumans spoke to the

*Agent Hoaglund for Gov't. Cross.*

superintendent John Dolan, Special Agent Rooney and myself took up positions outside the apartment house." 265  
Did you say that? A. Yes, I did.

Q. Which is correct, Mr. Hoaglund, that you did speak or Rumans did speak to Mr. Dolan before you took up your positions, as is contained in this affidavit, or is the testimony you are giving today correct that no one spoke to Mr. Dolan before you took up your places? A. My testimony today as to what I actually saw—my testimony as to what I actually saw and heard at the time is as I have given it today.

Q. Then, was it correct on March 3, 1943, that, as is recited in this affidavit, after Special Agent Rumans spoke to the superintendent you and Mr. Rooney took your places up outside the apartment house? Was that correct? A. No, as my recollection of the events on that morning are now, that is not correct. 266

Q. You read this affidavit before you signed it, did you not? A. Yes, I did.

Q. Were you satisfied at the time that it correctly incorporated the truth? A. At the time I was.

Q. And now your recollection is different? A. Yes, sir.

Q. Wasn't your recollection better four years ago than it is today as to this particular case? A. Well, my recollection now, Mr. Todarelli, is as I stated it. 267

Q. Now, having taken your places outside, who called you in? A. My present recollection is that it was Mr. Lambdom who called from the window, which would be, from where I was standing, would be the second story window, although it is the first floor of the apartment house.

Q. In your affidavit of March 3, 1943, you say this: "Shortly thereafter, meaning after you took up your posi-



*Agent Hoaglund for Gov't, Cross*

268 tion outside the apartment house, I was advised by Special Agent Rumans to come into the apartment 1-J." Do you understand, Mr. Hoaglund, that your recollection today differs from the recital given in the affidavit of March 3rd?

A. Yes, it does.

Q. Can you think of anything else you have told us today that differs from the recollection that you had of these facts in February or March, 1943? A. No, I cannot.

Q. Now at the time that you entered the apartment, having been called out by Mr. Lambdom, as you say, was Pauline Baker there? A. Immediately upon entering the apartment, she was not.

269 Q. You say this. Mr. Hoaglund, in your affidavit, "When I entered the apartment I found in the living room Special Agents Rumans, Lambdom, Little and the defendant Krulewitch. At this time Pauline Baker was not in the living room. I heard Special Agent Rumans request Krulewitch for permission to make a search of the premises. I heard Krulevitch tell him it was all right." Now, it is correct that Pauline Baker was not in the living room at the time you entered? A. That is correct.

270 Q. Did you seek to give the Court the impression when you signed the affidavit that Pauline Baker was not present at any time during that search? A. Absolutely not.

Q. Do you remember that you signed another affidavit on February 13, 1943; is that right? A. I believe that is the date.

Q. And I show you a photostat of an affidavit—

Mr. Hilly: It is in evidence here.

Q. (Continuing)—sworn to February 13, 1943, which is in evidence now, not the photostat but the affidavit, the original; is that correct? A. That appears to be my signature.

*Agent Hoagland for Gov't. Cross.*

Q. In that affidavit, Mr. Hoaglund, you say this: "A search was conducted of the living room which was also used as a bedroom by the defendant and one Pauline Baker, and who was present at the time." Was Pauline Baker present during the search? A. That is correct. 271

Q. Didn't you seek to give the impression to the Court in one affidavit that Pauline Baker was not present during the search and in the succeeding affidavit that she was present during the search? A. Well, I don't know—definitely not, and I don't think that impression could be obtained.

Q. Your answer is no. Do you know, Mr. Hoaglund, do you recall now that one week prior to the 13th of February, 1943, Pauline Baker signed an affidavit in connection with these proceedings to suppress? A. I have no recollection of it, no, sir. 272

Q. Do you remember that Pauline Baker in the affidavit dated February 6, 1943 stated that she was present at all times during the search; do you remember that? A. Well, I don't remember her stating in an affidavit. I know she testified to that effect on the stand.

Q. Well, in your affidavits, both of which I have shown you, you said nothing whatever about the defendant helping in the search by pulling out drawers and explaining what the various items were; that is correct, is it not? A. That is correct. I don't believe it is in the affidavit. That is correct. 273

Q. And isn't it a fact that today is the first time that you have ever told the Court that? A. It is.

Q. Can you tell us why today is the first time that you have ever told any court that? A. It possibly wasn't asked before.

*Agent Hodgland for Gov't; Cross.*

274 Q. Did you tell Mr. Wallace or Mr. Hilly at any time before today about it? A. I believe I did.

Q. Do you remember testifying before Judge Moscovitz on or about February 18, 1946 in a trial of this case?

A. I do.

Q. Were you asked this question and did you give this answer, or, were you asked these questions and did you give these answers, rather—

Mr. Todarelli: 121, Mr. Hilly.—

Q. Was there any conversation that took place in your presence with the defendant Krulewitch? A. Yes,

275 there was.

Q. What did Krulewitch say and what did you or any other agent say to him? A. He asked Agent Rumans what this was all about. At the time that I entered Rumans was in the process of explaining to him that there was a warrant for his arrest in Florida for violation of the White Slave Traffic Act. He then asked—Krulewitch asked to see the warrant. The warrant was shown to him—no, strike that. Not on this time. That is wrong. Not on this occasion. I have reference to a second arrest.

276 "He then asked Krulewitch if he had any objection to our searching the apartment, and Krulewitch says 'No, no, go right ahead.' And we proceeded to search the apartment."

Do you remember that? A. Yes, sir.

Q. You didn't say anything at that time about Krulewitch explaining during the process of the search what the various items were? A. Well, it wasn't a specific conversation, Mr. Todarelli. There were four other agents conducting the search. Alvin Kay would make comments from time to time in respect to all of us. My recollection

*Agent Hoagland for Gov't, Cross.*

is that his actions then was in respect to the search, was cooperative to the extent that I indicated on direct examination. 277

Q. After the defendant was brought down to the court house, what happened? A. Well, I didn't proceed with the defendant to the court house.

Q. Would you tell us how long after you entered the apartment it was that Krulewitch left the apartment house?

A. I would say between 45 minutes, between half an hour and 45 minutes.

Q. And you remained in the apartment? A. I did.

Q. What did you do there? A. Remained there. We were waiting for additional subjects. 278

Q. During the time that you were waiting for these subjects, did you do anything, or just sit around? A. I believe we organized the material which we had searched and which we had obtained in the search.

Q. Who is "we"? A. Agent Rooney and myself.

Q. Had you found anything yourself? A. Well, I believe in connection with other agents making the search I handled—well, I know I handled other papers.

Q. Did you give them to Mr. Rooney? A. I did.

Q. Did you tell Mr. Rooney where you found them? A. Yes, sir. 279

Q. Did he indicate on some paper that information that you gave him? A. I believe he prepared a list indicating where the items were obtained.

Mr. Todarelli: May I have that exhibit, please?

(Paper handed to Mr. Todarelli.)

Q. I show you Government's Exhibit 6 and I ask you if that is the list that was prepared by Mr. Rooney of the articles that were taken in the apartment? A. Yes, it is.

*Agent Hoaglund for Gov't, Cross.*

280 Q. Were you with Mr. Rooney at the time that he prepared this? A. No, sir.

Q. Do you know where he prepared it? A. No, I do not.

Q. Did he prepare this in the apartment while you were waiting for the other subjects? A. I don't believe he did.

Q. I don't suppose as you look through here that you can recollect what you found, can you? A. No, I cannot.

Q. But whatever you found you told Mr. Rooney where you found it? A. That is correct.

281 Q. Did you mark on any of the papers that you found the place where you found it? A. I did not.

Q. Do you know of your own knowledge of any papers that were found in the apartment by any of the agents where the agent marked down the location of the place where he had found it? A. I know at least one piece of evidence, yes.

Q. When you say you know of at least one paper, you are referring now to Government's Exhibit 4 for identification, are you not? A. That is correct.

Q. How do you know that, Mr. Hoaglund? A. Well, I subsequently saw that.

282 Q. You subsequently saw that exhibit? A. Yes.

Q. And isn't it a fact that the only exhibit that is so marked is Government's Exhibit 4? A. As far as I know.

Q. Yes. You handled the various items, didn't you, with Mr. Rooney? A. I handled some of them, yes, sir.

Q. You were present when Mr. Rooney was looking them over, too, were you not, Mr. Hoaglund, while you were waiting for this subject to come? A. We examined some of the papers, calling cards, *et cetera*.



*Agent Hoaglund for Gov't, Cross.*

Q. And, so far as you know then, Exhibit 4 is the only paper taken at that time, at that search, with the inscription made by Mr. Kumans, is that right? A. That's right, and for very obvious reasons. 283

Mr. Todarelli: I move that the last part of the answer be stricken out, "for very obvious reasons".

The Court: The last part of the answer will be stricken.

Q. Were you analyzing testimony on the morning of December 6th while you were waiting for subjects to come?

A. Analyzing testimony?

Q. Yes. A. Well, examining and evaluating what was important and what wasn't, yes. 284

Q. There was not anything else that you wrote on or that you marked, was there? A. I didn't, no.

Q. Do you know any of the people mentioned in Government's Exhibit 4 for identification? A. Yes, I do.

Q. Did you at the time that you made this search on December 6th? At that time did you know any of those people? A. Yes, I did.

Q. On December 6th? A. Yes, I did.

Q. Whom did you know? A. Belle de Marco. 285

Q. You knew her? A. Knew of her.

Q. You knew of Belle de Marco? A. Knew of her, yes.

Q. And where had you come into contact with her? A. Through our source of information.

Q. Now, Mr. Hoaglund; had you ever heard of Alvin Kay before the 5th day of December? A. I did not.

Q. Did you have a conversation with anybody about Alvin Kay on the 5th of December? A. Yes, I believe on.

*Agent Hoagland for Gov't, Cross.*

286 the evening of the 5th we agents made arrangements to meet at the garage in order to conduct the arrest as we did. I believe it was on the evening of December 5th.

Q. Then on the evening of December 5th, the only thing that was done by you agents, so far as you know, was to arrange to meet the following morning for the arrest, is that right? A. Well, we discussed the facts as we had them at that time, particularly that there was a warrant and who the agents were going to be on the detail.

Q. Do you know how the information came in from Florida that there was a warrant out for the arrest of Kay? A. Yes, I do.

Q. How did it come? By letter, by teletype, telegram or how? A. By telephone.

Q. Did you talk with Florida on the phone? A. I did not.

Q. Now, let us see if I get this straight. On December 5th you understand that somebody called from Florida and talked with somebody in your office by telephone, is that right? A. That is correct.

Q. That would be Mr. Rumans, am I right? A. You mean the party from Florida talked to Mr. Rumans?

Q. Yes. A. No, the conversation was not with Mr. Rumans.

Q. With someone else in your office? A. Someone else.

Q. Any one of the agents? A. Yes, an agent, a supervisor.

Q. Excuse me. None of the agents who were on this arrest? A. No, sir.

Q. Then you five agents determined to go the next morning, and you had a conversation about that, is that right?

A. You are speaking of December 5th?

*Agent Hoagland, for Gov't, Cross.*

Q. Right. A. That is correct.

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Q. And at that time there was a discussion about the identity of three subjects named in the warrant, Alvin Kay, Pauline Hillson and Mickey Roberts? A. That is correct, I believe there is.

Q. Or Joyce Winston I should say? A. Joyce Winston.

Q. All right. A. That is right.

Q. And then the next morning you five met? A. That is correct.

Q. When did you first see Government's Exhibit 4 for identification? A. In the office of this building on the 26th floor. I would say, well, it would have had to have been in the afternoon of December 6th, because I did not return to the office until after one o'clock.

290

Q. Didn't I understand you to say that you remained with Mr. Rooney and put together or organized, so to speak, the evidence that had been seized? A. The evidence that was there, yes, sir.

Q. And wasn't Government's Exhibit 4 one of those items? A. Absolutely not.

Q. That did not remain in the possession of you and Mr. Rooney then— A. It did not.

Q. —when the other agents left? A. It did not.

291

Q. That was brought down to this building? A. It was.

Q. And you of your own knowledge did not know at the time that that inscription was placed on there by Mr. Ruman as it was in the exhibit; am I right? A. No, not at the time he placed the inscription on there.

Q. All right. A. No, sir.

Q. And who told you about Belle De Marco? A. Our confidential informant.

Q. When? A. Oh, I couldn't mention any specific date.

*Agent Hoaglund, for Gov't, Cross.*

292

Q. Was it before December 6th? A. Yes, sir.

Q. Isn't it a fact that the first time you ever heard of this case was on December 5th? A. Well, Belle De Marco was—

Q. No, no, just answer my question, please. A. This case, yes, sir, December 5.

Q. What? A. December 5.

Q. December 5? A. Correct.

Q. So that on December 5 you did not know of any connection whatever that Belle De Marco had with this case? A. No, I did not. I did not.

293

Q. So, when you said that you had heard of Belle De Marco, you made that statement in the light of what developed later on, isn't that right, Mr. Hoaglund? A. No, I understood your original cross examination question to be whether or not I knew the woman or any of the individuals mentioned in that letter, and I then said I did. I knew of her specifically prior to December 5.

Q. Will you point out one place in this letter that contains the name Belle De Marco? A. "Belle and two others were held in \$3500 bail."

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Q. Is that what you mean? A. That is correct.

Q. —when you say that is Belle De Marco? A. That is correct.

Q. In other words, Mr. Hoaglund, you are seeking to give us the impression as you sit there on the stand that the Belle mentioned in that letter was the Belle De Marco of whom you had heard, is that right? A. That is correct.

Q. Aren't you trying to mislead the Court when you say that? A. You asked—no, sir, no, sir.

Q. What is there about Belle there that tells you that

*Agent Hoagland, for Gov't, Cross.*

that is Belle De Marco? A. Well, you have to understand the— 295

Q. Answer my question. What is there about the name Belle in that letter that tells you that that is Belle De Marco?

Mr. Hilly: I submit that the witness should be permitted to answer the question, your Honor.

The Court: He will be permitted to answer. Go ahead and answer the question as best you can.

A. You have to understand the business that these people are in, and my recollection is that the incident referred to her in the letter that "Belle and two others were held in \$3500 bail." 296

I knew on December 5th or 6th that Belle De Marco had been raided and that a case had been made against her for operating a house of prostitution.

Q. Where did you get that information? A. From our source of information.

Q. You had that on December 5th? A. Yes, sir.

Q. You had it on December 6th? A. Yes, sir.

Q. And all of this came to you during that evening when you and the other four agents agreed upon a meeting place for the following morning, is that right? A. All of what came to me? 297

Q. This information about which you are talking now.

A. No, sir, no, sir.

Q. It came to you at some other time during the day?

A. This is information that we had prior to December 6th. We knew the names of many people in that business, and it came to our attention in the course of our investigations.



*Agent Hoagland, for Gov't, Cross.*

298 Q. Didn't you tell me that when you first saw that exhibit that you recognized the names in there? A. Recognized the one name, yes.

Q. In other words, you came to the conclusion, didn't you, that the Belle referred to in there was Belle De Marco?

A. That is correct.

Q. And, in other words, you did not know that that Belle was Belle De Marco but you merely assumed that?

A. Well, I had in my opinion sufficient grounds on which to base such an assumption as that.

Q. It is an assumption pure and simple, isn't it? A.

299 You asked me if I knew the persons mentioned there and, as far as I am concerned, the Belle mentioned there is Belle De Marco.

Q. That is your own process of reasoning, is it not?

A. Well, obviously.

Q. And your own assumption, is it not? A. That is correct.

Q. And there is nothing in there that indicates that that is Belle De Marco, is there? A. Well, the additional statement that "(Belle) and two others were held in \$3500 bail".

That would have to be read with it but not just the Belle alone.

300 Q. I say, there is nothing in there that indicates that the woman who was held in \$3500 bail is the Belle De Marco that you are talking about? A. Nothing additional, no.

Q. All right. A. Let me read through further here, if you please, to see.

Q. Go ahead. A. There are other items in here which support my assumption.

*Agent Hoagland, for Gov't, Cross.*

Q. Now going back to this affidavit that you swore to on February 13, do you remember signing this affidavit which contained this language: 301

"When we arrived at Apartment 1-J we rang the bell and were eventually admitted to the apartment by John Dolan."

Do you remember that? A. If that is in the affidavit, yes, sir.

Q. And the fact of the matter is that you did not know of your own knowledge who admitted you into the apartment, did you? A. No, I was not present. That is correct.

Q. Did you seek to give Judge Leibell the impression that you rang the bell and John Dolan opened the apartment door? A. No, I did not seek to give the impression to him that I rang the bell. I sought to give the impression that the bell was rung by one of the group— 302

Q. And John Dolan— A. —and John Dolan did admit the agents to the apartment.

Q. Did you seek to give the impression that the bell was rung by somebody and thereupon John Dolan opened the door from the inside and let you in? A. No, no.

Mr. Todarelli: That is all.

Mr. Hilly: Would your Honor take judicial notice of the fact that on October 28, 1941 in the Court of Special Sessions that Belle De Marco was arrested on a charge of compulsory prostitution— 303

Mr. Todarelli: Oh, your Honor—

Mr. Hilly: Just a minute, please. And on October—

Mr. Todarelli: Your Honor—

Mr. Hilly: Wait till I make the statement as to judicial notice, please.

*Agent Hoagland, for Gov't, Cross.*

304 And on October 29, 1941 she was held in bail in the amount of \$3500 to answer that charge of compulsory prostitution?

Mr. Todarelli: Your Honor, that is a bad remark to make, and if it were made in the presence of the jury it would be good grounds for a mistrial.

The Court: Well—

Mr. Todarelli: Fortunately, you are able to evaluate such statements.

305 The Court: It does not make any difference to me whether she was arrested in this connection or not. However, I suppose I have a right to take judicial notice of the records of all the courts in the land.

Mr. Hilly: Yes, you have, your Honor.

The Court: But I am not concerned with whether Belle De Marco was arrested or not. That has nothing to do with the question we are trying here.

Mr. Todarelli: Exactly, nor do I think it is proper to prove a conviction of anybody.

Mr. Hilly: I did not intend it as proof of a conviction.

306 Mr. Todarelli: Judicial notice, your Honor, is only taken of things that are of common knowledge and not of specific knowledge.

The Court: All right. Let us go on with the hearing.

Mr. Hilly: I have no further questions of this witness.

The Court: Anything more, Mr. Todarelli?

Mr. Todarelli: No, your Honor.

The Court: That is all.

(Witness excused.)

## Exhibit 6.

Search &amp; Seiz.

307

U. S. DIST. COURT  
S. D. of N. Y.

Apr 14 1947

Notes of S. A. J. J. Rooney concerning evidence gathered  
at Apt of Al Kay 1J-325 E 77 St NYC on 12/6/41

Not to be incorporated in any report or memo but retained  
in 1A of file

J. J. ROONEY

From Apt 1J 325 E 77 St NYC "Al Kay" on 12-6-41 by

308

J. J. ROONEY

2 — Lease between Cora D. Blumberg and Pauline Hilson  
by Al Kay for 2nd floor 66 N. W. 5th St., Miami  
Florida Dated 10-2-41. From II (Drawer in Kays  
chest)

3 — Envelope containing Miami receipts from From II  
(Drawer in Kays chest)

E—Rent receipt for Ben Gordon from V. Scheyer dated  
12/31/41

G—Tel. receipt for Pauline Hilson 66 N. W. 5 St. Miami  
dated 10/27/41

H—Tel receipt Blank Pauline Hilson 66 N. W. 5 St.  
Miami dated 10/27/41

5 A—Receipt from John Dolan dated 12/1/41 for rent to  
Kay

B—Receipt from F. C. Chastain dated 12/1/41 for rent  
to Kay

6 A—Receipt from Edison Co. N. Y. C. to Alvin Kay  
dated 11/10/41 for 1590-2 Ave.

309

*Exhibit C.*

- 310 B—Receipt from Edison Co. N. Y. C. to Allen Kay dated 11/10/41 for 1594-2 Ave.  
 B—Receipt from Edison Co. N. Y. C. to Allen Kay dated 12/5/41 for 1594-2 Ave.

## FROM II.

- 8 E—Blumengarten rest card  
 10 A—Envelope from Baltimore "Royal Fur. Co. to Alvin Kay 1451 Broadway containing  
 B—Letter to Kay from "Uncle Sam," saying suite ready for shipment to El Chico—for \$133—recd. 166 dated 10/30/41  
 311 C—Envelope from Baltimore "Royal Furn. Co.  
 D—Notice of arrival dated 11-7-41 of Furn. in El Chico from Balto Merchants & Miners Transfer Co.  
 E—Envelope from Baltimore Royal Fur. Co. containing  
 F—Letter from Uncle Sam to Alvin Kay advising of shipping of furniture Dated 10-24-41  
 I—Freight bill for chair to El Chico from Royal Furn. Co. via Merchants and Miners Trans. Co. dated 10-24-41  
 J—Likewise dated 11-7-41  
 312 K—Likewise dated to 10-24-41.  
 L—Purchase and receipt to El Chico from Royal Fur. Co. 8 No. Frederick St. Baltimore Md. dated 10-21-41.  
 12 —Rent Receipt for 1590-2 Ave. from Eberhart to Kay dated 12-1-41  
 13 A—Envelope from Merch. and Miners Trans. to El Chico containing  
 B—Delivery dated 10-30-41 on furniture signed by Pauline Hilson From II  
 30 —5 page long hand letter from Al to "My own Darling" on Associated Adv. Co. stationary ret. address 1451 Broadway N. Y.



*Minutes of April 15, 1947.*

U. S.,

v.

(4/15/47)

KRULEWITCH.

313

The Court: In the matter of the motion to suppress Government's Exhibit No. 4 for identification:

I have given careful consideration to the evidence, the arguments, and the cases cited; and I am of the opinion and hold that the search and seizure in question was not a lawful incident of the arrest, but was wholly exploratory and general; and made solely to find evidence of the defendant's guilt of the alleged crime.

314

Nor am I convinced that the defendant, unreliable though he is, voluntarily consented to the search, or that anything which he did or said under the circumstances as they then existed was of such a voluntary nature as to legalize the search.

Nor do the cases, in my opinion, uphold the claim of the Government that the defendant's proprietary interest in the letter was not of such a nature as to be a basis for the motion to suppress. If he was the owner of the letter, it was illegally taken from him; if he was the custodian of it he had a right of possession which was good against the whole world except the true owner.

315

This holding makes it unnecessary to consider the order of the District Court for the Southern District of Florida, but were a ruling on that point necessary I would be compelled to hold that the order of that Court was a directive and not permissive.

*Motion to Suppress.*  
*E. Sorrentino, for Gov't, Direct.*

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It follows, therefore, that the seizure of the letter in the search of December 6, 1941, was in violation of the constitutional rights of the defendant, and that the motion to suppress must be and is granted.

UNITED STATES OF AMERICA,  
 vs.  
 ALVIN KRULEWITCH.

317

New York, April 15, 1947.

Trial resumed.

(At 11:45 a. m. the jury returned to the courtroom and the following proceedings occurred):

Mr. Hilly: Mrs. Sorrentino.

ELIZABETH SORRENTINO, resumed.

Mr. Todarelli: If your Honor please, the defendant here retained Mr. Rubin who sits here at a prior trial, or in prior proceedings here, and if your Honor has no objection and Mr. Hilly has no objection, may we have him here? I do not know if anybody on the jury knows him.

318

(Mr. Rubin stands in the courtroom.)

The Court: Any objection, Mr. Hilly?

Mr. Hilly: No, there is no objection, your Honor.

The Court: Very well.

DIRECT EXAMINATION continued by Mr. Hilly:

Q. Now, Mrs. Sorrentino, after you were arrested in Miami, when was it that you saw Alvin Kay? A. After I was arrested?

*E. Sorrentino, for Gov't, Direct.*

Q. Yes. A. It was around Thanksgiving.

Mr. Todarelli: I did not hear that.

Q. Will you keep your voice up, please?

Mr. Hilly: The witness said around Thanksgiving.

The Witness: It was around Thanksgiving.

Q. Now, on that occasion did Kay have a car? A. Yes, he did.

Q. Was it his car? A. No, it wasn't.

Q. Now, on that occasion did Kay have a car? A. Yes,

Q. Where did he get the car? A. He rented it from a man by the name of Leo.

Q. Now, after you saw Kay did you go to work in a place by the name of Lil's?

Mr. Todarelli: Your Honor, I think this is leading and—

Mr. Hilly: What is that?

Mr. Todarelli: I think it is leading. That is my main objection.

Mr. Hilly: Well, I am not sure whether it has been covered or not.

Mr. Todarelli: Well, it has been covered.

The Court: Well, the question is leading.

Mr. Hilly: All right.

Q. After Kay came down to Miami what did you do? That is, I am talking now with respect to a time after your arrest. A. Well, he came down and tried to straighten out the mess and he said he wanted to go to Jacksonville to see somebody, to see if we still couldn't run.

Mr. Todarelli: I did not hear anything of that answer, your Honor.

Q. Would you try to keep your voice up, please?

The Court: Can't you speak a little louder?

*E. Sorrentino, for Gov't, Direct.*

322

Mr. Todarelli: Will you please repeat that, Mr. Reporter?

(Answer read.)

Q. Was there anything further done at that time? A. Well, we had a fight.

Mr. Pinto: May we suggest that she move her chair to the front?

Q. Did you go any place in Miami? A. Yes, we did.

Q. Where did you go to? A. We went to this house to try to get work in there.

Q. What was the name of that house? A. Lil's.

323

Q. And did you work there? A. Yes, I did.

Q. And who made the arrangements for you to work there? A. Well, Betty and Al took me there in the car.

Q. And the money you earned at Lil's, what happened with that? A. Well, I took sick and I worked there for a few days and then I didn't collect the money, but Betty collected the money from the house.

Q. I do not know whether I asked you this or not; I have a recollection that I have, but just let me ask you this: With respect to the money at the El Chico Hotel, did you collect that? A. Some of it.

324

Q. And did anyone else collect any of the other money? A. What do you mean?

Q. Beg pardon? A. What do you mean?

Q. You say you collected some of the money at the El Chico Hotel, is that correct? A. Yes.

Q. What did you do with that money? A. I gave it to Betty.

Q. And what did she do with the money?

Mr. Todarelli: I object to this, your Honor, unless she was present.

The Court: If she knows.

*E. Sorrentino, for Gov't, Direct.*

Q. If you know, what did Betty do with the money? A. Well, she put it in the box and when Al came, why, she gave it to him. 325

Q. Now, you say you were sick; as a result of being sick did you return to New York? A. Yes, I did.

Q. And did anyone come up with you? A. Betty and I went back together.

Q. Do you recall when you arrived in New York City from Miami? A. I don't remember the date or the time.

Q. Well, can you tell me the month when you arrived? A. Yes. December.

Q. It was in December. And was it in the early part of the month or was it in the middle or the end of the month? A. Early. 326

Q. Now, in December, 1941, on December 7th Pearl Harbor occurred. Did you return to New York before or after Pearl Harbor? A. Before.

Q. And when you returned from Florida, where did you go when you arrived in New York City? A. I went straight to 325 East 77th Street.

Q. How long did you remain there? A. Well, I wasn't sure, I told you that. I could have left the next morning or that night; I don't remember exactly. 327

Q. Where did you go when you left there? A. Up to my mother's.

Q. And do you know where Betty went? A. Yes. She went back to Miami.

Q. Now, subsequently were you arrested; after you left New York City were you arrested? A. Yes, I was.

Q. How long after you left New York City were you arrested? A. Well, a couple of days later I think.

Q. Where were you arrested? A. Up at my mother's.



*E. Sorrentino, for Gov't, Direct.*

328 Q. Where were you taken? A. Right in my home town.

Q. From your home town were you taken anywhere?

A. Yes. To Rochester.

Q. Who arrested you, Mrs. Sorrentino? A. An agent by the name of Frost.

Q. And by an agent you mean an FBI agent; is that correct? A. Yes.

Q. Did you remain in Rochester for any period of time?

A. A week.

Q. During that time did you have any visitors? A. Yes.

329 Q. Who visited you? A. Betty and my mother.

Q. Now at that time, at the time Betty visited you, did you have a conversation with her? A. Yes.

Q. Will you tell us what that conversation was?

Mr. Todarelli: I object to this, your Honor.

The Court: Was the defendant present?

Mr. Hilly: No, he was not.

The Court: Then how is it admissible?

Mr. Hilly: On this ground, if your Honor please. One of the counts in the indictment charges a conspiracy by this defendant here and by the defendant Sookerman who is presently not on trial.

330 The Court: Is Betty Sookerman?

Mr. Todarelli: Yes, your Honor.

The Court: Betty is Sookerman?

Mr. Todarelli: Yes.

Mr. Hilly: And this is an act in furtherance of the conspiracy, this conversation, and consequently the Government argues that the act of one conspirator binds the other.

Mr. Todarelli: May I suggest this, your Honor, that if the conspiracy is valid it terminated when the

*E. Sorrentino, for Gov't, Direct.*

act violated in the conspiracy terminated. The conspiracy was to transport in interstate commerce. The minute that that transportation was at an end the conspiracy was at an end.

331

This, therefore, is a conversation that took place after the conspiracy had ended; and anything that was said by Betty is binding only upon Betty and not binding upon the defendant. It is just like a confession, for example, where a man is arrested, he is charged with conspiracy and he confesses to the District Attorney. The courts have uniformly held that that confession is binding only upon him because the conspiracy had ended.

332

The Court: Isn't any act or declaration of the defendant or a co-conspirator either before or after the act, evidence of intent?

Mr. Todarelli: No, sir. I don't mean to be impertinent at all, your Honor—

The Court: I have just carefully read Judge O'Connor's charge to the jury in the Chaplin case. He so charged, and it was the law.

Mr. Todarelli: This was after the arrest, your Honor.

333

The Court: I understand.

Mr. Todarelli: It was not in furtherance of the conspiracy.

The Court: I understand. The objection is overruled. The question may be answered.

Mr. Hilly: Mr. Reporter, would you be good enough to reread the question to the witness, please.

(Record read.)

A. She asked me, she says, "You didn't talk yet?" And I says, "No."

*E. Sorrentino, for Gov't, Direct.*

334 And she says, "Well, don't", she says, "until we get you a lawyer." And then she says, "Be very careful what you say." And I can't put it in exact words. But she said, "It would be better for us two girls to take the blame than Kay because he couldn't stand it, he couldn't stand to take it."

Mr. Todarelli: Now, your Honor, I move that that be stricken out on the ground that it is quite apparent that that conversation was not in furtherance of any conspiracy to transport in interstate commerce.

335 The Court: Motion overruled.

Mr. Todarelli: I have one further request, your Honor. May we have that date approximately fixed?

The Court: If the witness can fix it.

Q. Can you fix the date of that conversation? A. What?

Q. Can you fix the time, Mrs. Sorrentino, of that conversation with Kay—with Betty Sookerman? A. Well, no, I know it was after Pearl Harbor that conversation was.

Q. Did that conversation occur during the week that you were in Rochester, New York? A. Yes.

Q. I show you this and ask you if this is your signature?

336 A. Yes.

Q. Pardon? A. Yes.

Q. And I ask you to look at these papers here and I ask you if this is a statement that you made to a special agent of the Federal Bureau of Investigation? A. Yes.

Q. And that statement is dated on December 8, 1941, is that correct, and that is the date you made the statement?

A. Yes.

Mr. Hilly: I offer it in evidence.

Mr. Todarelli: No objection.

*E. Sorrentino, for Gov't, Direct.*

The Court: It may be received and marked as an exhibit. 337

(Government's Exhibit 5 for identification received in evidence.)

Mr. Hilly: With your Honor's permission I would like to read this statement to the jury.

The Court: You may.

Mr. Todarelli: Excuse me. May I see Mr. Hilly just a minute?

(Mr. Todarelli conversed with Mr. Hilly off the record.)

Mr. Hilly: I am reading now, ladies and gentlemen of the jury, from Government's Exhibit 5. It is dated December 8, 1941 (reads Government's Exhibit 5 to the jury). 338

Q. Now this statement, Mrs. Sorrentino, that you gave to Special Agent Frost on December 8, 1941, was that statement correct?

Mr. Todarelli: I object to that, your Honor.

A. No.

The Court: On what ground?

Mr. Todarelli: On the ground that you can't impeach your own witness. 339

Mr. Hilly: I am not attempting to impeach my own witness, your Honor.

Mr. Todarelli: The question sounds like it to me, was it correct?

The Court: I will permit the question.

Q. Was that statement correct? A. No.

Q. You made that statement after your conversation with Betty? A. No, I didn't; I made it on my own.

Q. You made that statement on your own? A. Yes.

*E. Sorrentino, for Gov't, Direct.*

340

Mr. Pinto: I did not get that. That was private between you and the witness.

Mr. Hilly: I did not intend it to be private.

The Witness: I made that statement on my own.

Mr. Pinto: I did not get it. Might we hear it?

Mr. Hilly: Will you read the answer, please, Mr. Reporter, so that Judge Pinto and Mr. Todarelli can hear it.

(Answer read.)

Q. Now, from Rochester where were you taken to, Mrs. Sorrentino? A. Jacksonville, Florida.

341 Q. And were you bailed out in Jacksonville, Florida? A. Yes.

Q. And did you put up the money for your bond? A. No.

Q. Do you know who did? A. Yes.

Q. Who put it up? A. Alvin Kay.

Q. Now, after you were bailed out in Jacksonville, Florida, where did you come or go? A. I went back to New York.

Q. And where in New York City did you go? A. 325 East 77th Street.

342 Q. And whom did you see at 325 East 77th Street? A. Betty and Alvin Kay.

Q. Now, at that time when you returned to New York City and saw Alvin Kay, did you have a conversation with him at that time with respect to Government's Exhibit 5 in evidence? A. Yes.

Q. And what was the conversation that you had with him?

Mr. Todarelli: I object to this on the grounds I have heretofore stated, not binding upon the defend-



*E. Sorrentino, for Gov't, Direct.*

ant. She did not have the exhibit, and I would like to point that out too, your Honor. I assume she did not.

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Mr. Hilly: I know she did not, and I just asked her if she had a conversation with respect to that exhibit, your Honor.

The Court: The question may be answered.

Q. Will you tell us the conversation, Mrs. Sorrentino, that you had with Alvin Kay upon your return from Jacksonville with respect to Government's Exhibit 5 in evidence? A. Yes. I told him what I had done and what I had said to the FBI man, and he said that was swell. He said he was sure we could beat the case.

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Mr. Todarelli: Will you have it read?

Mr. Hilly: Will you read the question, please, Mr. Reporter, and the answer.

(Question and answer read.)

Q. Now, did you remain in New York after your return from Jacksonville, or did you go anywhere? A. No, I remained in New York and then I went up home for the holidays.

Q. And when did you return to New York City? A. After New Year's.

345

Q. And that would be January of 1942? A. Yes.

Q. And when you returned to New York City where did you live, Mrs. Sorrentino? A. 325 East 77th Street.

Q. And upon your return to New York City what did you do? A. Well, I started working back in cider stubes again.

Q. Did you have any conversation with anyone about working in those cider stubes before you went to work again? A. Yes.

*E. Sorrentino, for Gov't, Direct.*

346 Q. With whom did you have the conversation? A. Kay and Betty.

Q. And did you do the same work in the cider stubes that you did prior? A. Yes.

Q. Now, at or about that time did you have any conversation with Alvin Kay with respect to your living together at 325 East 77th Street? A. Yes.

Q. And what was that conversation? A. Why, at that time, because everything was so hot, and you people were after him and the local people and everything, and that if we separated, you know, the three of us separated and that  
347 I move by myself.

Q. And did you separate? A. Yes, I did.

Q. And where did you go to live at that time? A. I went to live with a woman, rented an apartment from a woman, rather.

Q. And did you still continue to work in the cider stubes? A. No, then I didn't.

Q. Did you work any place else? A. Yes.

Q. Where did you work? A. I had a few men I knew here and there, and I went with them.

Q. Pardon? A. I had a few men I knew here and there  
348 and I went with them.

Q. And you received money from these men? A. Yes, I did.

Q. And what did you do with the money? A. I met Kay at different times and I gave it to him.

Q. Now, did there come a time when you didn't continue to live with this woman? A. Yes.

Q. And after you had left living with this woman did you meet Kay? A. Oh, yes.

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*E. Sorrentino, for Gov't, Direct.*

Q. And did you have a conversation with him— A. 349  
Yes.

Q. —or an argument? A. Yes, I did.

Q. And what was the conversation that you had with Kay? A. Well, he thought I was still living with Mrs. Jensen, and I wasn't, and I told him—and I told that I was; that I was living with a couple of other girls. So we got in an argument and he followed me up and I tried to run to Mrs. Jensen because she had her apartment right next to the one I had had, and I ran up to her. In the meantime the apartment door that I had was open, see, because it was empty, and so I ran into her, and so he called me and he told her, he says, "You two, I can have you both arrested, because you know she is a prostitute and you let her run here", and things like that, and he slapped me across the face. 350

Q. Now, thereafter did you leave New York City? A. Yes, I did.

Q. And where did you go to? A. Amsterdam.

Mr. Todarelli: When is this, by the way?

Mr. Hilly: This is in 1942.

Q. Is that correct, Mrs. Sorrentino? A. Yes.

Mr. Todarelli: Do you recall the month in 1942 351  
that it was?

The Witness: When?

Q. That you went to Amsterdam, New York. A. It could have been March.

Q. Pardon me? A. It must have been around near March.

Q. Now, what did you do in Amsterdam, Mrs. Sorrentino? A. I worked in a house.

Q. And what did you do with the money that you earned?

A. I gave it to him when he came up to collect it.



*E. Sorrentino, for Gov't, Direct.*

352 Q. And did he come up to Amsterdam? A. Yes, he did.

Q. Now, prior to your going to Amsterdam, did you write any letters? A. Yes.

Q. And where were those letters written? A. In 325 East 77th Street.

Q. And who was present at the time you wrote these letters? A. He was, Betty and myself.

Q. And did Betty also write some letters? A. Yes, she did.

353 Q. And the information that was put in those letters, where did you get that from? A. Well, he wrote on another—you know, he wrote on another piece of paper that I was to write individually, you know, real letters, two of them.

Q. Can you tell me the month or the time when these letters were written? A. All I know is—

Q. It was prior to your going to Amsterdam, is that right? A. Yes, that is right.

Q. That would make it in 1942, is that right? A. That is right.

Q. Now, what date did you put on those letters? A. Well, November something. I don't remember.

354 Q. Pardon me? A. I know I put a November date on it.

Q. And were the letters written as if you were in New York, or if you were in some other—

Mr. Todarelli: I object to that, your Honor. That is leading.

The Court: It is leading, that is true.

Mr. Todarelli: I suggest that Mr. Hilly have her just tell what she did. That is all.

The Court: Go ahead, Mr. Hilly.

*E. Sorrentino, for Gov't, Direct.*

Q. With respect to the place from which you wrote those letters, will you tell us what place you designated that you were at at the time? A. In Miami. 355

Q. In Miami? A. Yes.

Q. But actually you were in New York? A. Yes.

Mr. Hilly: Have you got photostatic copies of those letters, Mr. Todarelli?

Mr. Todarelli: Yes, I have.

Mr. Hilly: If your Honor please, I call upon the defendant to produce those letters.

Mr. Todarelli: I have photostats of two letters.

Mr. Hilly: If your Honor please—

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Mr. Todarelli: I think it highly improper that the defendant is asked to produce anything at any time.

The Court: Where are the originals?

Mr. Hilly: There are no originals, your Honor.

The Court: I won't compel the defendant to produce anything.

Mr. Hilly: Very well, your Honor.

Q. After you wrote these letters, what did you do with them, Mrs. Sorrentino?

Mr. Todarelli: Now, your Honor, I object to any further testimony about this on the ground that we are talking about something that is not in evidence. 357

The Court: I will permit the question.

Q. What did you do with the letters after you wrote them? A. I signed them and he took them and put them in the envelopes; see, what it was that you people—

Mr. Todarelli: I object to this, your Honor, and move that the answer be stricken out.

The Court: What she said about "you people" may be stricken.

*E. Sorrentino, for Gov't, Direct.*

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Q. Now you say you gave the letters back to him; is that right? A. Well, the ones that I had rewritten like you know, from what his copies were.

Q. And you signed them, is that right? A. That is right.

Q. Did you see what he did with those letters? A. Yes. He put them in the envelopes that he—

Q. He put them in envelopes; is that right? Is that right, Mrs. Sorrentino? A. Yes.

Q. Where did he get those envelopes that he put them in? A. From you people.

359

Q. Were those letters that had been returned to him? A. Yes.

Q. Now, the information contained in those letters, Mrs. Sorrentino, was that true or false?

Mr. Todarelli: I object to this, your Honor.

The Court: She may answer. She has testified she wrote these at the instruction of the defendant.

Mr. Todarelli: I think that is as far as she ought to go on this point. The letters are the best evidence.

Mr. Hilly: I agree with Mr. Todarelli, the letters are the best evidence.

360

The Court: That is true.

Mr. Hilly: I agree with him.

Mr. Todarelli: And until they are in evidence I don't think any testimony as to their contents ought to be introduced at this time.

The Court: I will permit the question.

Mr. Hilly: Would you reread the question, please, to the witness.

Q. (Read.) A. They were false.

Q. And do you recall generally what that information was, Mrs. Sorrentino?

*E. Sorrentino, for Gov't, Cross.*

Mr. Todarelli: I object to this, your Honor, on 361  
the ground that the witness is being asked to give  
the contents of something not in evidence.

The Court: She may answer.

A. Well, it had to do with the dates, and supposed to be  
that I was sick, I can't remember now just what it was, that  
I was sick and I wanted to thank him for being so good and  
things like that, you know. I can't remember now just what  
it was that I did write.

Q. Do you recall the dates that you put on these letters?

A. I know it was November something.

Mr. Hilly: If your Honor please, I have no fur- 362  
ther questions of this witness at this time.

You may inquire.

With your Honor's permission, if any members  
of the jury want to look at that statement, it is avail-  
able here.

The Court: They can read it afterwards. They  
can't read and listen at the same time.

Mr. Hilly: Very well, your Honor.

CROSS EXAMINATION by Mr. Todarelli:

Q. Mrs. Sorrentino, where are you residing now? A. 363  
I don't care to disclose that. I don't care to disclose where  
I am living now.

Q. You don't want to tell me where you are living? A.  
No, I don't.

Q. Are you living with Mr. Sorrentino? A. No, I am  
not.

Q. With whom are you living? A. I am living—I don't  
think that is necessary right now.

Q. You don't want to tell me with whom you are living?

A. No, I don't.

*E. Sorrentino, for Gov't, Cross.*

364 Q. Are you living with some man now? A. Yes, and his family.

Q. And how long have you been living with him? A. About maybe eleven months.

Mr. Todarelli: Can you tell me what she said, Mr. Reporter?

(Answer read.)

Q. Prior to that time with whom did you live? A. I did not live with anybody. My husband, a long time ago.

Q. How long ago did you live with your husband? A. Let's see; about two years, maybe two and a half years ago.

365 Q. Then, two and a half years ago with whom did you live after you left your husband? A. I didn't live with anybody.

Q. Have you lived with anybody in the last two and a half years except the man with whom you are now living? A. No.

Q. Are you living with a man by the name of Marino now? A. No.

Q. Do you know a man by the name of Marino? A. No.

Q. You don't? A. No, I don't.

366 Q. Do you know a man by the name of Cincey? A. Oh, certainly.

Q. Do you? A. Yes.

Q. Have you lived with him at all the past two and a half years? A. No.

Q. Do you know a man by the name of Curtis? A. Yes.

Q. Have you lived with him during the past two and a half years? A. No.

Q. What was your name at the last trial, before Judge Moscovitz? A. Curtis.



*E. Sorrentino, for Gov't, Cross.*

Q. Didn't you live with Mr. Curtis? A. No, I did not. 367

(To the Court): May I have a drink of water, please?

The Court: Mr. Bailiff, will you get the witness a drink of water, please.

Q. Do you feel better now? A. Yes, I feel better.

Q. Pardon? A. Yes, I feel better.

Q. I think you told me a moment ago that you never lived with Mr. Curtis. A. That is right, I did.

Q. And that is correct, is it not? A. That is right.

Q. Do you remember testifying before Judge Moscovitz? A. Yes. 368

Q. Last February, 1946? A. Yes.

Q. And were you asked these questions and did you give these answers (page 34); Mr. Hilly asked you these questions:

Q. How old are you? A. 26.

Q. And are you married? A. Yes, I am.

Q. And are you separated from your husband? A. Yes.

Q. By what other names have you been known? A. My married name was Elizabeth Sorrentino, and Joyce Winston, and my maiden name is Elizabeth Johnston. 369

Q. And have you also been known by the name Joyce Winters? A. Yes, I have.

Q. And you are presently known by the name Elizabeth Curtis? A. Yes, I am.

Mr. Hilly: If your Honor please—

Q. And you are presently—

Mr. Hilly: Just a minute, please, I have an objection, sir.

If your Honor please, I don't mind Mr. Todarelli reading from the record, but I don't think he should

*E. Sorrentino, for Gov't, Cross.*

370 read from the entire record. If there is anything that contradicts the testimony of the witness on the previous trial I think he should put that question and answer to her.

The Court: I assume you are coming to that, are you?

Mr. Todarelli: Yes, that is right; the next question. This was preliminary:

Q. "Q. And you are presently residing or living with a man who is not your husband? A. Yes, I am."

371 A. Oh, I wasn't living with him. He lived in his own—that is a proven fact; he lived up in his own hotel, I lived in mine, and I just took his name. He had no clothes with me, so you couldn't say I am actually living with him.

Q. Were you asked that question, "And are you presently residing or living with a man who is not your husband?" And did you give the answer, "Yes, I am"? A. I don't remember giving that answer.

Q. You don't remember? A. He had no clothes with me, so therefore he didn't live with me.

Q. What is that? A. He had no clothes with me, so therefore he didn't live with me.

372 Q. What did you mean when you said, if you did say, that you were living with him? What did you mean by that? A. Well, I stayed with him every now and then, but I wasn't with him.

Q. Are there any other men besides Mr. Curtis who are in that category now? A. I don't think that is important. I don't think that I have to say who I am living with or what.

Q. You don't think that is important? A. No, I don't. No.

*E. Sorrentino, for Gov't, Cross.*

Q. Will you be good enough, Mrs. Sorrentino, to give us all the names under which you have been known? A. Yes. I have been known as Johnston, Winston, Winters, Curtis, Sorrentino. 373

Q. Did you give us the name Johnston? A. Yes, I did.

Q. Were you ever in a place called the Rochester Shelter? A. Yes.

Q. Do you remember when that was? A. Yes. When I was a little girl.

Q. Do you remember the year? A. No, I don't.

Q. Was it in 1932? A. I don't remember, but I guess it was about then. 374

Q. At that time you were 16 years of age? A. No.

Q. Were you? A. Buffalo you are talking about.

Q. When were you born? A. 1919, September 27th.

Q. And in 1932 you were 13 years old, is that right? A. Uh huh.

Q. How long were you at the Rochester Shelter? A. Oh, a week I guess.

Q. How long? A. A week.

Q. Were you ever at the Strong Memorial Hospital? A. I don't know. I don't remember that.

Q. You don't remember that? A. No. 375

Q. Were you ever at the New York Training School?

A. Yes, I was.

Q. How long were you there? A. Three years.

Q. That was long before you met Alvin Kay, was it not?

A. Yes.

Q. And that was before you were convicted in 1939?

A. That is right; but I was never convicted. That is just a school.

Q. I say, that was before you were convicted and sent to Bedford Reformatory? A. Yes.

*E. Sorrentino, for Gov't, Cross.*

376 Q. Did you become involved in something or other with two Italian boys who were sent to Elmira Reformatory?

A. Yes.

Q. What was that? A. Well, I just got in a little trouble with them.

Q. A little trouble? A. Yes.

Q. And these two boys were sent to Elmira; is that right? A. That is right. Not through me. I was a minor, I didn't know anything.

Q. You were a minor? A. Yes.

Q. And were you arrested in Buffalo? A. Yes.

377 Q. Do you remember when that was? A. 1938 or '37 I guess; somewhere around there.

Q. 1937? A. I guess so.

Q. And that was prior to the time that you met Alvin Kay, is that right? A. Yes, that is right.

Q. Do you remember the charge? A. Yes. A wayward minor.

Q. Just precisely what happened? A. When I was arrested that time?

378 Q. Yes. A. Sure. I was working in a restaurant in Buffalo and I went back to meet this girl, and it was about some pictures, and we were supposed to give each other some pictures, girls; so, I went there looking for her and she had already left, and being I was wandering around there, and I was kind of strange in Buffalo, two detectives picked me up and they locked me up, and so they had me arrested. And they asked who I was. And I didn't know what to say, I didn't know what to do even. So they asked me who I was living with, so I told them the truth.

Q. Do you remember a detective by the name of Burns?  
A. Burns?

*E. Sorrentino, for Gov'n Cross.*

Q. Isn't it a fact that when you were arrested you were in a car with a man? A. Oh no. In Buffalo you are talking about?

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Q. Yes. A. Oh no; I was on the street. I was walking around looking for this girl. No.

Q. Does it refresh your recollection that you were arrested by a Detective Burns while you were sitting in a car with a man by the name of Ralph Wilson? A. No, no, no; that is not so. If I am arrested, and if I am, I will say so. So don't be saying that, because I am bad enough as it is, but I will tell you the truth.

Q. Isn't it a fact that when Detective Burns arrested you, you tried to break away from him? A. No. I was too scared to do anything. I just walked along with him.

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Q. Didn't you tell somebody at that time that your father had died eleven years before and that your mother had been dead for twenty years? A. Not that I remember.

Mr. Hilly: Would your Honor instruct the jury that the mere asking of these questions does not establish any fact?

The Court: Yes. The jury is so instructed.

Mr. Todarelli: I will prove them all, your Honor.

The Court: All right.

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Q. Do you remember at that time that you gave the names of Mr. and Mrs. Martin of Canandaigua? A. Maybe I did; I don't know.

Q. Did you give the names of Mr. and Mrs. John McDonald of 204 Gorham Street, Canandaigua? A. That is true, I guess I did. I know them, certainly.

Q. Do you remember that on February 1, 1937 you were arraigned before a Buffalo judge by the name of George W. Woltz? A. No, I don't remember that.



*E. Sorrentino, for Gov't, Cross.*

382 Q. And that, at the same time, two boys were arraigned with you? A. No.

Q. You don't remember that? A. No. One I remember. That is the one that I said I had lived with.

Q. Just one? A. Yes. I didn't mean to get him into trouble.

Q. Would it refresh your recollection if I were to give you the first name of the detective who arrested you, William Burns? A. I know you told me that, but I don't know, I don't remember.

Q. I didn't give you the first name. Does that refresh your recollection now? A. No. If you say it is true, I was arrested at the time, so therefore I can't remember the names it is so long ago; I just don't remember.

Q. Did you give your address at the time as the Corona Hotel? A. I did. That I remember.

Q. And did you tell him that you were also known under the name of Wilson? A. No, I never did, because I didn't say I am Wilson or anything.

Q. You didn't use the alias Wilson at all? A. I don't know. You see, I don't remember. It could have been; yes, it is possible.

384 Q. Didn't you say that your father lived at Penn Yan, New York? A. I don't remember that.

Q. Didn't you tell— A. They asked me where my father—where my folks came from. So I said Penn Yan probably.

Q. Didn't you at that time say that you were married? A. I don't remember that.

Q. Didn't you say you were married to Ralph Wilson and that you had been married on December 2, 1936, at Rochester, by the justice of the peace? A. No, no.

*E. Sorrentino, for Gov't, Cross*

Q. You did not? A. No, I didn't.

385

Q. Didn't you say at that time that your husband earned \$16 a week? A. No, no, no.

Q. And that you lived in two rooms, in a brick dwelling with a monthly rent of \$5 a week? A. No, not that I remember. I don't remember any of those things, so you can keep asking me, and some I probably do and some I probably don't remember, but if I do I will tell you. I was arrested. That is all. I was arrested at the time, but I don't care to answer any more questions in that case. That is long past and gone.

Q. Didn't you give your previous address as 219 Lake Avenue, Rochester, where you said you had lived for half a year? A. I don't remember.

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Q. And didn't you tell them at that time that you had also lived at 17 Barnum Street, in Fairport, New York, for five years? A. Yes, that I told them, yes.

Q. And didn't you tell them at the time that you were pregnant? A. No. They asked me if I was and I said, "I don't know," because I didn't know.

Q. In other words, at the time you had had relations with men? A. Yes, I did.

Q. At the time I am talking about, do you remember a boy by the name of Jack? One named Ralph, and one named Jack? A. Yes, they were brothers.

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Q. You do remember that now, don't you? A. Yes.

Q. Did there come a time while you were being held on this charge when an investigation was made by the probation office and they confronted— A. Yes, I turned myself in.

Q. —and they confronted you with certain facts that they had discovered, and you had admitted them? A. No,

*E. Sorrentino, for Gov't, Cross.*

388 they didn't discover anything about me, because I came and told them. I told the woman in the police station just after a while, as I got afraid and I told her who I was, and I asked for a certain probation officer of Buffalo that I had known and she sent for him, or sent for her.

Q. Who was that? A. I don't know. Mrs. Bolan, but I don't quite remember.

Q. Was it Miss Berge? A. Yes, that is right.

Q. Miss Berge? A. Yes, I turned myself in.

Q. Miss Berge from the Hudson Training School? A. That is right.

389 Q. She came in and talked with you, didn't she? A. Yes, a very nice woman.

Q. And do you remember her going to court with you in company with a Miss Gertrude Geister of Rochester? A. Yes.

Q. And it was then that you were sent to Bedford Reformatory? A. Yes.

Q. And that was long before you met Alvin Kay? A. That is right.

Q. By the way, was there a woman, or were there two men with you at the time that you were arrested? A.

390. When?

Q. In early 1937. A. What was the charge against me?

Q. Well, you remember the name Ralph Wilson? A. Uh huh.

Q. You said you were not arrested in a car with him? A. I remember once being arrested. I wasn't in no car with him. I told you that in the first place. If I was I would tell you so quick, too.

Q. Were you living with one or two men at the time? A. I was living with one fellow.

*E. Sorrentino, for Gov't, Cross.*

Q. One fellow? A. That is right.

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Q. How many were arrested? How many men were arrested with you, one or two? A. They weren't arrested. I just said who I lived with and they—I don't know what it was.

Q. Do you remember testifying before Judge Clancy in this court?

Mr. Todarelli: May I withdraw the last question?

The Court: Yes, question withdrawn.

Mr. Todarelli: Bottom of page 63, Mr. Hilly, at the first trial.

Mr. Hilly: What record, Mr. Todarelli?

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Mr. Todarelli: First trial before Judge Clancy, the bottom of page 63.

Q. Were you asked these questions:

"Q. Were you arrested February 6, 1937, for prostitution? A. No.

Q. When you were given the indeterminate sentence of three years? A. No.

"Q. What was that for? A. For wayward minor.

"Q. I asked you that before. A. I said yes it was.

"Q. There were two men arrested with you at that time? A. Yes.

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Were you asked those questions and did you give those answers? A. If it is in the book I must have said that, but I remember one fellow there he got six months, because I was staying with him.

Q. Because you were staying with him? A. Yes, but I didn't do anything wrong. I was working in the restaurant, because I was a minor. That is what it was.

Q. At that time you were 18 years old, is that right?

A. No.

*E. Sorrentino, for Gov't. Cross.*

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Q. Well, you were born in 1919? A. I was 17 years old. I was still a minor. They put me in Westfield State Farms for being a minor.

Q. Isn't it a fact, Mrs. Sorrentino, that in the early part of 1937 you were making your living by prostitution?

A. (Witness shakes her head.)

Mr. Todarelli: The witness shakes her head.

A. I done it, but I wouldn't say. Before I went to Bedford I never knew about such things. I never heard of such things.

395

Q. You never heard about such things then? A. No, before I went to Bedford I never heard of such things, no, I didn't.

Q. Now, you went to Bedford after this arrest in Buffalo, isn't that right? A. That is right. I was convicted of being a wayward minor, but I had never committed prostitution before that.

Q. Didn't you tell me a moment ago that you had gone to bed— A. Well, that is not prostitution. Prostitution is when you accept money from men.

Q. You never knew about prostitution? A. No, I didn't know what it was then.

396

Q. Did you accept any money from these men? A. I was working, sure. I mean that isn't prostitution.

Q. Did you accept any money from these men? A. Well, they took me out to eat, maybe gave me a couple of dollars, but I was living right with this one man, and he bought me a couple of dresses and things.

Q. How long had you lived with him, Mrs. Sorrentino?

A. I don't remember.

Q. What? A. I don't know.



*E. Sorrentino, for Gov't, Cross*

Q. Didn't you also live with his brother Jack? A. No. 397

Q. Didn't his brother Jack take you to his hotel? A. No, no.

Q. Didn't he take you to his room and wasn't it in his room that you met Ralph, who is also known as Jerry?

A. No, the way it was I met them both and I decided I would stay with not Jack, but I decided to stay with the other one. So Jack got himself another room in the hotel.

Q. Yes. A. Yes, that is right.

Q. You lived with Jack first and then Ralph moved in and Jack moved out, is that right? A. No.

Q. Isn't that the story, Mrs. Sorrentino? You were living with Jack in a room— A. No. 398

Q. —and then Jack brought Ralph over who is also known as Jerry, and you took a liking to Ralph, so Ralph moved in and Jack moved out, is that right? A. Well, he had to move out. He couldn't stay there.

Q. No, of course not. By the way, you had returned to Buffalo, hadn't you— A. Yes, sir.

Q. —before you were arrested? A. Uh huh.

Q. Pardon me? A. Yes, I did.

Q. Where did you run away from? A. Up to New York. 399

Q. From where? A. From my mother's.

Q. From your mother's home? A. I didn't run away; I just left.

Q. Pardon me? A. I just left.

Q. And you were on parole at the time, weren't you?

A. That is right.

Q. And one of the conditions of the parole was that you remain with your mother? A. That is right.

*E. Sorrentino, for Gov. T. Cross.*

400

Q. But you didn't like that, and so you returned to Buffalo, isn't that right? A. No, that isn't it at all.

Q. Well, you didn't like something in Canandaigua, and so you went to Buffalo? A. That's right.

Q. Pardon me? A. That's right.

Q. And you were running away from anything? A. No, I just wanted to go out on my own, that is all.

Q. By the way, how did you happen to get to the training school? A. Well, you went all over that a moment ago, and I am not going over it again. That is all.

401

Q. I do not mean the Bedford Reformatory. I don't mean the Bedford Reformatory; I mean the Hudson Training School. A. What has that got to do with this case? What has it? It hasn't got nothing. So we went, that is all.

Q. How did you get there, Mrs. Sorrentino? A. Well, because—how did I get in Hudson Training School?

Q. Yes. A. Because of different things I done. I wasn't a very good girl, and I admit it at home, and I wasn't very good, and I didn't like to go to school.

402

Q. Who complained about you, as a result of which you were sent there? A. Well, my mother told the teacher, and the teacher I guess. She says, "I want you to write a note for me every time she does not show up for school or is late for school, or anything like that. I want to hear about it," and this teacher did.

Q. And you went to the Training School, and then after spending three years there you were released on parole? A. That is right.

Q. And sent back to your mother's home? A. That is right.

*E. Sorrentino, for Gov't, Cross.*

Q. When was the next time that you were arrested? 403

A. We just went over that. '37.

Q. The next time after 1937? A. The next time?

Q. Yes. A. When I went to Bedford?

Q. Yes. A. Prostitution.

Q. You mean that was for violation of the Bedford parole? A. No, I was arrested for prostitution.

Q. Isn't it a fact that you were sent away for violation of your parole? A. Yes, but you asked me what I was arrested for and I keep telling you.

Q. I said when. A. Pardon me, excuse me. When?

Q. When was that? A. Sometime in June—no, I was 404 arrested twice with him, but one time I got out of it all right, and they dismissed the case, and the other time, that was, I don't know, October, sometime around there.

Q. And how long were you at Bedford after this Buffalo conviction? A. A year and a month, and a week and a day.

Q. No, now don't get confused. A. I will tell you. I went there I remember 18 months at that time, and a year, a month, and a week and a day the second time.

Q. The first time it was 18 months? A. That is right, 405 18. It may have been 18, or a little more. I don't quite remember now.

Q. When did you get out of there? A. What?

Q. When did you get out? A. Well, I got out in 1939.

Q. Are you sure it wasn't in 1938? A. Well, '38 or '39. I don't know.

Q. Could it have been August 1938? A. Don't confuse your dates, because I don't even know myself. I know I got out of there. It was not August. I remember it was in the summertime the first time—wait a minute. The first

*E. Sorrentino, for Giff T. Cross.*

406

time it was in the summertime in August, but I can't remember what year now. I don't know.

Q. Wasn't it the year before you met Alvin Kay? A. It could have been, yes. It could have been, yes.

Q. It was, wasn't it? A. It could have been.

Q. What did you do between August 1938 and the time when you met Alvin Kay? A. I told you—oh, I worked up in Utica.

Q. Where? A. In Utica.

Q. In Utica? A. That is right.

407

Q. What doing? A. The same thing I was doing with him, prostitution.

Q. You were prostituting? A. Yes.

Q. Now, you didn't know Alvin Kay at the time, did you? A. No.

Q. Were you arrested in Utica? A. No.

Q. When did you come to New York? A. Early—in the spring I believe that I met Alvin Kay.

Q. In the spring of 1939? A. (No answer.)

Q. Am I boring you, Mrs. Sorrentino? A. No.

Mr. Hilly: I object to that, if your Honor pleases. I submit it is entirely unnecessary.

408

Mr. Todarelli: Your Honor, may the record show this, sir: that I asked her a question and she did not answer but she yawned.

Mr. Hilly: I submit—

Mr. Todarelli: And that implies—

Mr. Hilly: —that is not unnatural for any person to yawn. I yawn sometimes.

The Court: So do I.

Mr. Hilly: There is nothing unnatural about that.

Q. Am I boring you, Mrs. Sorrentino?

*E. Sorrentino, for Gov't, Cross.*

Mr. Hilly: If your Honor please—one minute, 409  
please, Mrs. Witness. I do not think that is necessary, sir.

The Court: I do not think it is either. Go ahead with your questioning, Mr. Todarelli.

Q. The question was when did you come to New York?

A. The year that I met him.

Q. Was that in the spring or was it in the summer? A.  
Well, it was early spring.

Q. Now, between the time that you were released from  
Bedford after 18 months and the time that you came to  
New York in the spring of 1939, were you anywhere except 410  
Utica, New York? A. No.

Q. No? A. At Syracuse, excuse me.

Q. Syracuse? A. Yes.

Q. Were you doing that in Syracuse also? A. No.

Q. What were you doing in Syracuse? A. What was  
I doing in Syracuse?

Q. Yes. A. I was living there.

Q. Were you living with a man in Syracuse? A. Yes, I  
was.

Q. Were you anywhere except in Utica and in Syracuse  
during that period of time? A. No. 411

Q. No? A. No.

Q. Did you stay home with your family during that pe-  
riod of time at all? A. Uh huh.

Q. What is that? A. Yes, I did.

Q. Were you with them all the time? A. With who all  
the time?

Q. Your family. A. No, I wasn't.

Q. Were you asked these questions at the second trial  
before Judge Porterie?

Mr. Todarelli: Page 76, folio 227.



*E. Sorrentino, for Gov't, Cross.*

412 Q. (Continuing) "Q. Now, when did you leave or when were you released on parole from Bedford? A. A year after that I did 18 months and came out in August of '38.

"Q. 1938? A. Yes.

"Q. Having in mind that you met Alvin Kay in the street in June 1939 where were you living between the time you were released and the time you met Alvin? A. I was home with my family.

"Q. For how long? A. Not very long. I left home. I didn't get along well at home. I wanted a home of my own.

413 "Q. You were away a good part of the year? A. Yes.

"Q. You were in New York during that time? A. Yes.

"Q. Part of that time weren't you living in New York? A. No."

Now, where were you living?

Mr. Hilly: If your Honor pleases, I submit there is nothing contradictory about that.

Mr. Todarelli: The jury is here.

The Court: All right. If there is not, no harm has been done by it. Go ahead, Mr. Todarelli.

A. Look, I will tell you. I got out of Bedford and went home with my family. I was paroled home. I left home and I went to Syracuse. I started keeping house in Syracuse and I met a couple of girls. I went to Utica and worked. After I worked in Utica I did not work in Syracuse, remember? I came to New York and then I met him, and that is all.

Q. When you use the word "work," Mrs. Sorrentino, we are to assume that you mean that you were— A. Prostitution.

Q. Yes, all right. A. That is right.

*E. Sorrentino, for Gov't, Cross.*

Q. When did you arrive in New York? A. It was in the spring, I am telling you. 415

Q. Was it one or two or three months before you met Kay? A. That is right.

Q. What is right? A. What you just said, is it two or three months before you met Kay; and I said yes.

Q. What did you do between the time that you arrived in New York and the time you met Kay? A. Well, I worked in a couple of places in New York.

Q. Did you pick Kay up on the street? A. No. He picked me up.

Q. And that was in the early part of June, 1939? A. That is right. 416

Q. I think you told us that he took you to Coney Island? A. That is right; he did.

Q. Do you remember the Alamac Hotel? A. What has that got to do with it? Yes, yes.

Q. Were you living at the Alamac Hotel at the time you met Kay? A. No, I never lived there.

Q. Isn't it a fact that Kay took you to the Alamac Hotel after he left you— A. Certainly; I had to see a John of mine, so he took me over there so I could see him.

Q. That was after you came back from Coney Island? A. Yes. 417

Q. Is that right? A. No, you are very much mistaken. The man, he picked me up, he took me to eat, then he took me to Coney Island, and then he left me in the show, just as I said. It was nothing about no hotels in there.

Q. Then after he picked you up at the movies, then he took you where? A. He took me to—we went out and had coffee together, him and this other girl, then we went to his apartment.

*E. Sorrentino, for George Cross.*

418

Q. That is what number? A. 156th Street, 555.

Q. What name did he give you at the time? A. Gordon.

Q. Didn't he give you the name Alvin Kay? A. No, no. Wait a minute, I beg your pardon. Because he didn't even give me his last name. I looked at the bell and I seen the name on the bell. I think a day later he told me what his name was. Just Kay, he told me.

Q. Didn't he say his name was Alvin Kay? A. No, no, no, he didn't. He just gave me his first name.

Q. Didn't you go to his office? A. I have been to his office several times.

419

Q. Shortly after you met him didn't you go to his office?

A. Yes. I said he told me his name after. But just Kay.

Q. Do you know the name of the office? A. Yes. I know it was on 42nd some place. It was an advertising office.

Q. It was the Kay Advertising Company, wasn't it?  
A. Yes, that is right; yes.

Q. By the way, what was the condition of your health when you met him? A. It was all right as far as I know.

Q. Weren't you ill at the time? A. No, I wasn't ill.

420

Q. Didn't you testify before Judge Porterie that at the time you met Kay you were sick? A. Yes; but that is a personal matter. I mean I was sick, certainly. But I mean not—

Q. At the bottom of page 77. I want to ask a couple of preliminary questions.

Q. Miss Johnston, Alvin picked you up then, didn't he? A. He picked me up, yes.

Q. He went to Coney Island with you? A. Yes.

Q. Try to answer because the stenographer wants to get your answers, Miss Johnston. A. Yes.

*E. Sorrentino, for Gov't, Cross.*

A. What?

421

Q. "Q. Were you in good health at the time? A. I was sick when I met him."

Were you asked those questions and did you give those answers? A. Yes. Well, I was sick when I met him, but I mean not where—I had a hemorrhage when I met him, that is what I am talking about; but I am not talking about anything else. I wasn't rundown or anything like that.

Q. Oh, you didn't mean that; you didn't mean you were rundown? A. I didn't mean I was rundown. I had a hemorrhage when I met the man.

Q. As a matter of fact, weren't you suffering from some lung ailment of some kind or other, bronchial condition or something like that? A. Oh, yes. I didn't suffer that until I came back from Miami.

422

Q. Isn't it a fact that you suffered from that before you went to Miami? Don't you remember being taken to a doctor by Kay and having X-rays taken? A. After Miami, yes, that is right.

Q. Wasn't that before Miami? A. No, that was after.

Q. That was after Miami? A. Yes, yes, it was.

Q. Were you asked these questions and did you give these answers at the trial before Judge Porterie, and I am continuing on page 78. I asked you before and I want to repeat it so that you will understand where I am, Mrs. Sorrentino.

423

Q. Were you in good health at the time? A. I was sick when I met him.

Q. Generally were you all right? A. I suppose so, yes, I was all right.

Q. What is that? A. Yes, I was all right.

*E. Sorrentino, for G. V. Cross.*

424 "Q. He then told you that he was going to take you to a doctor, didn't he? A. Yes."

Didn't you— A. A doctor? When I first met him?

The Court? No, that is not the question. The question is, did you so testify in the former trial?

The Witness: If it is there it is there; then I did.

The Court. We will recess until 2:15.

(Recess to 2:15 p.m.)

Afternoon session.

425 ELIZABETH SORRENTINO, resumed.

Mr. Todarelli: Do you have the last question?

(Question and answer read.)

Mr. Todarelli: Thank you.

Cross Examination continued by Mr. Todarelli:

Q. Did you shortly after you met him make a trip to Chicago with him? A. Yes, I did.

Q. That was a business trip, wasn't it? A. Yes.

Q. Where did you stop? A. The Drake Hotel.

Q. The Drake Hotel? A. Yes.

426 Q. And how many rooms did you have? A. I had a suite of rooms.

Q. A suite of rooms? A. Yes.

Q. And you know, do you not, Mrs. Sorrentino, that the Drake Hotel is one of the first class hotels in Chicago? A. That's right, yes, I know that.

Q. Did Kay make love to you? A. Yes, he did.

Q. Did he tell you he loved you? A. Uh huh.

Q. Did you tell him you loved him? A. Uh huh, yes, I did.



*E. Sorrentino for Gov. A. Cross.*

Q. And you did love each other, didn't you, at that time? A. Well, yes, we did. 427

Q. Do you remember the business that he had in Chicago? A. Yes, I do. He came there about something with his advertising book, or something, something like that.

Q. And by that time you did know that he had an office here in New York City? A. Yes, I knew that.

Q. Did he go there every day? A. Where?

Q. In New York City to his office. A. No, not every day.

Q. Well, did he go every business day to his office in New York City? A. Well, I don't know when his business days were. 428

Q. Well, did he tell you that he was going to his office in New York City every day? A. No, not necessarily. Sometimes, naturally, I would ask him where he was going and he said, "Well, I am going down to the office", or something, not every day.

Q. Well, would you say it was practically every day that he told you that, every business day I mean? A. No.

Q. You wouldn't? A. I can't remember just when he told me. 429

Q. You visited his office I think you said? A. Yes, twice.

Q. And that was the Kay Advertising Company, is that right? A. Yes.

Q. What did he have in the office there? A. Why, there was three or four offices and parts connected.

Q. Did he have a stenographer? A. I never—he was supposed to have, but I never saw one. I called up there and talked to one which I thought was.

*E. Sorrentino, for Gov't. Cross.*

430 Q. Yes. At any rate, he had someone working there in the office for him, didn't he, is that right? A. I suppose so.

Q. Now, up to the time that you went to Chicago, with him you did not tell him that you had been at the Hudson Training School, did you? A. No, I didn't tell him.

Q. You didn't tell him that two boys had— A. Well, he knew what I was doing and all that, yes, but I never told him.

Q. Wait, Mrs. Sorrentino, please. Will you be good enough to answer my questions? A. Yes, certainly.

431 Q. You did not tell him that you had been arrested in Buffalo, did you? A. No, I didn't, no.

Q. You did not tell him that you had been at Bedford Reformatory? A. No, I didn't.

Q. In other words, as far as your past record was concerned, he didn't know anything about it? A. No, he didn't at that time.

Q. There came a time, or, by the way, I think you testified on direct examination that you stayed in Chicago with him for just a few days and then you returned to New York? A. That is right.

432 Q. Is that right? A. Yes.

Q. And that during the time that you were in Chicago you made a trip to some house with him? A. Yes, that is right.

Q. You did not remain there though, did you? A. No, I didn't.

Q. Then you came back on a Greyhound bus? A. Yes.

Q. And Betty met you? A. That is right.

Q. Then you said something about a telephone call from Chicago? A. Yes.

*E. Sorrentino, for Gov't, Cross.*

Q. You said that he talked with you and that he wanted some money? A. Yes. 433

Q. Now, isn't it a fact that you never talked with him on the telephone? A. No, that is not true, I did talk to him on the phone.

Q. May I refer you, Mrs. Sorrentino, to the first trial before Judge Clancy and may I ask you if you were not asked these questions and didn't you give these answers, and I am reading from the top of page 17;

"Q. After you returned from Chicago how long after was it when you again saw Alvin? A. You mean when I came back?" 434

"Q. Yes, A. Let me see. About a week. No, maybe a few days later. I don't know the exact date.

"Q. Before he came back did you receive a telephone call? A. Yes. Betty received it, I didn't."

A. Well, I talked to him.

Q. "Q. From whom was the telephone call? A. Alvin.

"Q. Did Betty tell you what he had said? A. Yes.

"Q. What did Betty tell you? A. That he needed some money, something was the matter with the car, with his car.

"Q. Did you have a conversation with Betty about that money? A. Yes, sir." 435

Were you asked those questions and did you give those answers? A. Yes, I did.

Q. Does it refresh your recollection now that you never talked with Krulewitch on the telephone from Chicago? A. Oh, but I did. I probably didn't think about it.

Q. Then you didn't tell the truth at the first trial; is that it?

Mr. Hilly: Objected to, if your Honor please.

*E. Sorrentino, for Gov't, Cross.*

436

A. I told a few words—

Mr. Hilly: Just a minute. That is purely argumentative, your Honor. That is an argument that can be made to the jury.

Mr. Todarelli: I am asking this witness a question. I am asking her: Did you tell the truth at the first trial?

The Witness: Yes, I did.

The Court: She says she did.

Q. You told the truth at the first trial? A. Certainly.

Q. Pardon me? A. Certainly.

437

Q. What did you mean when you answered as follows to the question, "Before he came back, did you receive a telephone call? A. Yes. Betty received it, I didn't." What did you mean by that? A. Well, it was—naturally he called her up and she answered the phone, so she took the receiver up first; I talked to him. The man isn't going to call up without talking to me too.

Q. That is your explanation, that both of you talked to him? A. Yes, we did. Both of us did.

Q. First Betty talked to him and then you talked? A. Yes, I talked to him.

438

Q. What did you mean when you said in answer to this question, "Did Betty tell you what he had said? A. Yes.

"Q. What did Betty tell you? A. That he needed some money, something was the matter with his car?"

A. Yes.

Q. What did you mean by that, Mrs. Sorrentino? A. Just what I said.

Q. I thought you told me a moment ago that you talked with him? A. I did. I had a few words with him.

*E. Sorrentino; for Gov. T. Cross*

Q. And that he told you that he needed some money for his car? A. Yes, he also told me. 439

Q. You mean that he told Betty too? A. Yes, and we were talking it over.

Q. You both talked to him in other words about the same thing? A. Yes, about the same thing.

Q. Why didn't you tell the Court that? A. I don't know. Probably I wasn't asked or something.

Q. You were asked, "Before he came back did you receive a telephone call?" And you said, "Betty received it, I didn't." Why didn't you tell the Court both of you talked with Kay on the phone? A. I don't know. 440

Q. There came a time after you returned from Chicago that you were sent away; is that right? A. That I what?

Q. After you came back from Chicago you were sent away to Bedford, is that right? A. Yes. I was arrested twice in the meantime.

Q. Would that be on November 3, 1939, Mrs. Sorrentino? A. Yes. I guess it was around then.

Q. You went to Bedford Reformatory, and I think you testified you were there one year, one month, one week and one day? A. Yes, that is right.

Q. Is that right? A. Yes. 441

Q. When you were arrested here in New York City on that charge did you get in touch with Kay? A. When I was arrested?

Q. Yes. A. He got in touch with me through his lawyer he hired.

Q. In New York City I mean? A. Yes.

Q. Isn't it a fact that he didn't know that you had gone back to Bedford and that he had quite a job finding you? A.



*L. Sorrentino, for Gov't, Cross.*

342 Q. Oh, he knew. He was there all the time the trial was going on. He knew what was happening.

Q. You mean to say that he knew about this arrest in New York City in November, 1939? A. Why, of course he did.

Q. Isn't it a fact that he knew you then under the name of Joyce Walakoski? A. No.

Q. Isn't it a fact that he came up to see you at Bedford Reformatory? A. Yes, he did.

Q. Isn't it a fact that the reason that he had a hard time finding where you were is because you had told him  
343 your name was Joyce Walakoski? A. I never gave him that name.

Q. You never gave him that name? A. No, I never gave him any last name.

Q. But at any rate he visited you up there, didn't he? A. Yes, he did.

Q. He got a writ out? A. Yes.

Q. And you said on direct examination that the fact that he got the writ out interfered with your getting out? A. Yes, it did. Just a matter of a couple of days, that is all.

Q. Just a matter of what? A. A couple of days, three  
344 or four days; I don't quite remember now.

Q. Isn't it a fact that you were released the day after the writ was returnable in White Plains? A. Yes. The next morning I went home. But I was supposed to go out before then.

Q. Didn't he tell you that he wanted to marry you? A. Oh yes, he told quite a few people that.

Q. When did he first tell you that? A. Well, he told me lots of times. Gee, I don't know. I can't remember how many times he did tell me that.

*E. Sorrentino, for Gov't, Cross*

Q. Didn't he tell you that within a few days after he first met you in June, 1939? A. No. We didn't speak of marriage then. 445

Q. Pardon me? A. We didn't speak of marriage then.

Q. Didn't he tell you that he wanted to marry you long before you went back to Bedford, returned back to Bedford? A. No. This was after I was in Bedford; then he talked like that.

Q. Well, at any rate, he did propose to you or discuss marriage with you? A. No, he never discussed it like that or anything. He just told people, he had to, that he was going to marry me. 446

Q. He told you that too, didn't he? A. No, not directly. He didn't tell me, he didn't say, "I am going to marry you". He never did.

Q. Do you know a Mrs. Standish? A. Yes, I do.

Q. Who was she? A. Well, she was—when I was released from Bedford I was placed, like, more or less under her custody, but she wasn't my probation officer or parole officer, but she was like a friend that was—that she had something to do with it anyway, that I went to report to her once a week.

Q. Do you know a Mrs. Murphy? A. Yes, I do. 447

Q. Who is she? A. She has something to do with the parole office in Bedford.

Q. Did Krulewitch talk to you in the presence of Mrs. Murphy? A. Yes, he did.

Q. Did he tell Mrs. Murphy that he wanted to marry you? A. Gee, maybe he did. I don't even quite remember. Kind of excited that day, and I don't remember the conversation.

Q. Would it refresh your recollection if I were to

448

read some questions and answers from page 80 of the transcript before Judge Porterie? A. Yes.

Q. "Q. When you were up there did he have any talk with you in the presence of the probation officer? A. There was Mrs. Murphy.

"Q. Did he speak to you in the presence of the probation officer? A. Yes.

"Q. Did he tell her that he was going to marry you? A. Yes."

Does that refresh your recollection that he did ask you—tell her he was going to marry you? A. I guess so.

449

Q. Didn't he also say that to Mrs. Standish? A. Yes, he had to, because she brought us together up there—

Q. Just answer the question. Did he tell that to Mrs. Standish? A. Yes, he did.

Q. How long after you had been released from Bedford did he tell her that? A. I was still on parole.

Q. You were released just before Christmas, 1940, is that right? A. Yes.

Q. Is that right? A. Before Christmas, yes.

450

Q. If there is any doubt in your mind, you met Kay in June, 1939. You went up to Bedford, back, to serve some more time, one year, one month and so forth, in November, 1939; you came out just before Christmas, 1940, is that right? A. Go ahead.

Q. You went to Florida in 1941; is that right? A. Yes.

Q. So this was 1940 when you were released from Bedford? A. Right before Christmas. That is right. I can't remember exactly the dates and things like that.

Q. Where did you go when you were released from Bedford? A. Which year do you mean? Of late?

Q. I mean the last time in December, 1940, when you

*E. Sorrentino, for Gov't, Cross.*

were released from Bedford Reformatory. You went to 451  
your mother's? A. That is right.

Q. How long did you remain there? A. Until my  
parole was over.

Q. How long was that? A. Some time in March 12th.  
My release was after. My release came March 12th.

Q. Your release came when? A. March 12th, my  
papers.

Q. Your release from parole? A. Yes, that is right.

Q. Approximately two and a half months later? A.  
Yes.

Q. Now, Kay visited you there, didn't he? A. Yes, he 452  
did.

Q. And he met your mother? A. Yes, he did.

Q. How many times did he come up all together? A.  
I don't know, three or four times.

Q. Did he meet your brother also? A. Uh huh.

Q. Did there come a time when your mother and brother  
came down to New York as his guests? A. Yes, that is  
true.

Q. And he told your mother he wanted to marry you,  
didn't he? A. I contradict you there. My mother came  
to New York and had kind of an argument. My mother 453  
said, "Well, what about my daughter? You did say you  
were going to marry her".

He said that is all outmoded, or something like that, be-  
cause my mother was crying and she was carrying on.

Q. When he came up to Canandaigua and visited you,  
didn't he tell your mother he was going to marry you?

A. Yes, he did, up there.

Q. Didn't he tell that to your brother up there also?

A. I don't know. My brother is a boy. He don't know  
about those things.

*E. Sorrentino, for Gov't Cross.*

454 Q. How old was your brother at the time? A. About 16.

Q. About what? A. 16, something like that. He didn't know anything about that.

Q. Didn't he tell your mother that you weren't too well? A. I don't remember.

Q. Didn't he tell your mother that you ought to see a doctor for medical treatment? A. No.

Q. Didn't he tell your mother that you were getting thin and that you ought to go away for a rest? A. (No answer.)

455 Q. Your answer is no? A. I don't remember what he said. I know he discussed it at the dinner table. He said "She does look a little thinner".

Q. Didn't he say you ought to go away for a rest? A. Probably he did. I don't remember now.

Q. Now, which is it? A moment ago you said no and now you are saying probably he did. Which is it? A. I can't remember. I don't want to say anything I am not sure of. That is all. If I am sure I will tell you.

456 Q. Mrs. Sorrentino, you were pretty sure of things when you were testifying before Judge Porterie, weren't you, in 1943? A. Right now things have happened since two years ago and I cannot remember exactly word for word what I said in the other—in the other trial, except—

Q. In other words, your recollection at the trial before Judge Porterie in August of 1943 was better than it is today, is that right? A. What do you mean by "better"? It is about the same.

Q. You had a better memory then than you have today, isn't that right? A. Well, I guess that's true.

Q. All right. Now, were you asked these questions—



*E. Sorrentino, for Gov't, Cross.*

Mr. Todarelli: And I read from page 83, top of 457 the page, at the trial before Judge Porterie.

Q. "Q. Didn't Alvin tell your mother that you were not well? A. He said I was getting skinny."

Mr. Hilly: If your Honor pleases, I submit that the witness has answered that question in almost identically the same language.

Mr. Todarelli: No, she first denied it.

Mr. Hilly: And she subsequently—

The Court: She said since then, Mr. Todarelli, that that was discussed at the dinner table.

Mr. Todarelli: She says, "Probably I did but I don't remember", and now I want to make sure that she does remember. That is all. 458

The Court: All right. Go ahead.

Q. "Q. Didn't he say you ought to go away? A. No, no, he did not.

"Q. Did he? A. He told my mother we might go away.

"Q. And didn't Alvin when you came back to New York take you to a number of doctors? A. No, Betty took me to the doctors."

459

Mr. Hilly: Now, if your Honor please, I submit there is nothing contradictory in those questions and answers that Mr. Todarelli has read so far. This is just an attempt by Mr. Todarelli to throw this record all over this courtroom, your Honor, by reading these questions and trying to create the atmosphere that some of these questions and answers are contradicting the witness.

Mr. Todarelli: We have an intelligent jury, your Honor.

*E. Sorrentino, for Gov't, Cross.*

460

Mr. Hilly: I concede that we have, your Honor, definitely. I make no aspersions about the jury in any way, shape or form, your Honor, but I do think we ought to see if we can expedite it somewhat.

The Court: I think Mr. Todarelli has in mind that the record of a former trial can be used only in cross-examination where there is a contradictory statement.

Mr. Todarelli: Yes, sir, that is right.

Mr. Hilly: Well, if your Honor please, I object. This is not a contradictory statement.

461

The Court: I think you are right in that, Mr. Hilly.

Mr. Hilly: Thank you, sir.

Q. Mrs. Sorrentino, you testified this morning that Mr. Kay did not take you to any doctors until after you had returned from Miami. That is right, isn't it? A. Gee, I don't know how to answer that question, because—

Q. No. Just didn't you tell us that? A. I can't say nothing about that. I have been to a number of doctors when I went to work for examinations and stuff like that.

462

Q. Mrs. Sorrentino, don't you remember that I asked you if you did not have some lung or bronchial trouble? A. Yes, but that was after I got in trouble with this thing here.

Q. In other words, the point I am making is, didn't I ask you whether or not he had not taken you to doctors and you said "Not until we got back from Miami," isn't that right?

Mr. Hilly: That is not the point.

A. After.

Mr. Hilly: Just a moment. That is not the point Mr. Todarelli was making. Mr. Todarelli was making

*E. Sorrentino, for Gov't, Cross.*

the point as to whether or not there was any conversation about the doctors when she was up State New York with her mother after her release from Bedford. 463

Mr. Todarelli: I have forgotten about that.

The Court: All right. Go ahead, Mr. Todarelli.

Q. Didn't you say that this morning, Mrs. Sorrentino?

A. Now are you referring to after we all got in trouble, right?

Q. Supposing we start fresh. I asked you, Mrs. Sorrentino, if you did not have some bronchial trouble and you said no. I asked you if it was not the fact that Kay had taken you to doctors and you said "Only after we came back from Miami". Do you remember that? A. That is true. I did say that, because it is so. 464

Q. All right. Now what I am asking you is, didn't Kay take you to doctors before you went to Miami? A. Oh, no.

Q. All right? A. I beg your pardon. Yes, he did.

Q. Oh, now he did? A. Yes, it was in Miami that he took me to a doctor, but it was not medicine. It was to a chiropractor's or something. Of course, I remember now because my back was hurting me, so that is true, he did. 465

Q. Did you ever visit a doctor for some bronchial trouble here in New York City before you went to Miami?

A. No, no, I didn't.

Q. Did you go to Virginia Beach? A. Yes, I did.

Q. Didn't you go to Virginia Beach because of ill health? A. No--yes, I did, that is true.

Q. All right. Isn't it a fact that Kay paid your expenses on that trip? A. Yes, that is true.

466

Q. And you went with Betty, didn't you? A. That is true.

Q. That was on the doctor's orders? A. No, he didn't give me any orders like that. He just—I told him what I was doing. I told him the truth. So he says not to do that. He says, "Rest up for a couple of weeks", but he didn't say go away or something like that, but he did tell me to rest for a couple of weeks. That is what he told me.

Q. The doctor told you that? A. That is true.

467

Q. That is, the doctor to whom Mr. Kay had taken you? A. No, no, it was one of my customers, because he came in and he says, "You aren't looking so good, Joyce," and Betty and I got talking and he said, "I know a good doctor," and I went there, because he had given me iron injection and I could not take it; I didn't like it because it hurt me; but not him, he never sent me to no doctor.

Q. But he did send you to Virginia Beach? A. Yes.

Q. Did you tell him that you had seen a doctor and the doctor had recommended a rest? A. Yes, I did.

468

Q. Did Betty ever take you to any doctors? A. Well, when we went to work we went to get our examinations by different doctors. Down in Miami I went to a doctor down there, too. That is, a chiropractor.

Q. Didn't Mr. Kay take you to doctors at some time or other about your lungs? A. No (shakes head).

Mr. Todarelli: The witness shakes her head.

The Witness: After I went and got an X-ray, but he didn't take me to a doctor. There was one doctor after I came back from Miami and we had been in trouble and then I went to the doctor and got an X-ray because I had a very bad cold, too.

Q. The question I asked you was, didn't he take you to

*E. Sorrentino, for Gov't, Cross.*

a doctor at any time about your lungs at any time? A. 469  
Yes, one doctor after the Miami incident.

Q. He thought you had tuberculosis, didn't he? A.  
Well, I thought I did. He didn't, and I told him I was  
sick and maybe I should get an X-ray and he says, "All  
right," and I went down to 40 Centre Street, or some num-  
ber, I don't remember now, and I went up there and got an  
X-ray.

Q. Didn't he tell you he was afraid you had tuberculo-  
sis? A. No.

Q. Didn't you testify at the trial before Judge Porterie  
on page 84: 470

"Q. Didn't Alvin ever take you to doctors? A. Yes,  
he did take me to doctors about my lungs. He thought I  
had T. B.

"The Court: Did you hear what she said, Mr.  
Wolf?

"Mr. Wolf: She said he thought she had T. B."

A. Well, after I told him about it, but he didn't come  
directly and tell me I had T. B., or anything like that. I  
told him what my symptoms were, that I was coughing.

Q. Didn't your mother tell Kay in your presence that  
there was something wrong with you bronchially after you 471  
got out of Bedford? Didn't your mother tell him that? A.  
Witness shakes head.)

Q. You say no? A. I have nothing wrong with my  
lungs when I was in Bedford because they knew me as a  
very healthy girl. At one time I lost so much weight and  
my skin started to turn yellow. They didn't know what was  
the matter and they took me and had some X-rays taken,  
and my X-rays came back negative, and there was nothing  
wrong with my lungs.



*E. Sorrentino, for Gov't, Cross:*

472

Q. I asked you didn't Krulewitch tell your mother when he visited you that you had a bronchial condition? A. Maybe I had a cold or something. Probably. I can't remember that now whether she did or didn't; that is, if my mother did.

Q. Were you asked this question at the same page, or these questions and did you give these answers:

Q. Miss Johnston, your mother told Alvin you had a bronchial condition, didn't she? A. I don't know.

Q. Didn't you have a bronchial condition after you got out of Bedford? A. Yes.

473

Q. You recall that? A. Yes." Now isn't it a fact that after you did get out of Bedford you did have a bronchial condition? A. Oh, probably I had a cough. I coughed a lot, yes, I suppose so, but he never took me but to one doctor about it, and that was a long time after.

Q. And wasn't it because of this bronchial condition that he told you to go away for a rest? A. No.

Q. Didn't he tell you he wanted to marry you and take you to a climate where your bronchial condition could receive the proper treatment? A. No, no, he didn't.

474

Q. Did Kay ever give you any gifts? A. Gifts?

Q. Yes, A. What kinds of gifts are you referring to?

Q. Any kind. A. Well, once in a while—no, he never gave me a box of candy, I don't ever recall. Well, at one time with my money I went out and he got me a couple of dresses.

Q. No, answer my question. Did he give you any gifts? A. No, he went out and bought things.

Q. Did he ever buy you a ring? A. It wasn't considered a gift.

*E. Sorrentino for Gov't, Cross.*

475

Q. Did he give you a ring? A. Yes, you are right.

Q. You forgot about that?

Mr. Hilly: Objected to, if your Honor please. I do not think we need that question.

The Court: That will be stricken.

Q. Do you mean you forgot to tell us about that?

Mr. Hilly: I object to that. There is no evidence here that the witness did forget to tell us about that.

The Court: Objection sustained.

Q. He did give you a ring? A. Yes, he did.

Q. It was a diamond ring, wasn't it? A. Yes.

Q. And he said it was his engagement ring? A. No, he just gave it to me. 476

Q. Did he open any bank accounts in your name? A. He played the Stock Market, and he asked me to sign the paper, and that is all.

Q. Did he open a brokerage account in your name? A. I don't understand that. I don't know. I know the Stock Market. I remember that. He said he couldn't take it because his name wasn't any good any more, and he wanted me to use my name or something.

Q. Was there a brokerage account in your name? A. Are you talking about the Stock Market? That is the only thing I know about. 477

Q. Don't you know what a brokerage account is, Mrs. Sorrentino? A. No.

Q. Don't you? A. (Witness shakes head.)

Mr. Todarelli: The witness shakes her head indicating no.

The Witness: I don't know what it is. You can't—

Q. Weren't you asked at two prior trials about a brokerage account? A. The Stock Market. That is what I am talking about.

*E. Sorrentino, for Gov't, Cross.*

478 Q. Weren't you asked at two prior trials about a brokerage account? A. I don't remember, but I know if you mean the Stock Market, that is what I thought they meant, and that is what I thought it would mean, brokerage, Stock Market to me anyway.

Q. Weren't you asked this question on page 84 before Judge Porterie:

"Q.. Did he open a brokerage account in your name?"

A. Yes."

A. Well, Stock Market.

479 Q. You did know what a brokerage account was when you answered that question, didn't you? A. No, if it means Stock Market, then that is what I meant, and that is all there is to it.

Q. I show you this paper and I ask you if it is not a fact that a brokerage account was opened in your name?

A. If you will let me see it.

(Mr. Todarelli hands paper to witness.)

The Witness: Well, that is the Stock Market, yes.

I mean, he had to put it in my name.

Mr. Todarelli: I move that that be stricken, your Honor, "he had to put it in my name."

480 The Court: It may be.

Q. By the way, describe the ring, if you will, to the Court and jury. A. A small—

Mr. Hilly: Objected to as being immaterial, if your Honor pleases.

The Court: She may answer.

A. (Continuing) It was just a little diamond. It wasn't worth anything much. Just a little diamond.

Q. Weren't there 56 stones in this ring? A. Oh, please, now. No.

*E. Sorrentino, for Gov't, Cross.*

Q. Was it a solitaire? A. Well, it had one diamond, 481  
and there was two little chips on each side of it. Oh, yes,  
he gave me another ring for Christmas, too, which was—  
I think there was about six diamonds in it, with little chips,  
those little tiny chips, and a little ruby, about a square ruby;  
that is right.

Q. He gave you two rings altogether? A. Yes, two  
rings.

Q. What did you and Betty do when you were down in  
Virginia, when you went to Virginia Beach? A. Well, we  
went on a due bill in his advertising, got it from his other  
brother Burt, and we went down there to—we went down 482  
there for a week. And we just played around a little bit,  
and we went in the sun, and went in the pool, and things  
like that.

Q. Did you meet any men? A. Oh, yes.

Q. Have any affairs with any men? A. Yes, we did.

Q. How did you go down to Virginia Beach? A. By  
boat.

Q. Did you have any affairs on the boat? A. No, not  
—coming back, yes.

Q. You came back by boat also? A. Yes, we did.

Q. You and Betty? A. Yes.

Q. You had affairs on the boat? A. Yes. 483

Q. With whom? A. Well, there was a couple of sailors  
on the boat and they were being transported, and so both  
of us girls, we started dancing with them and things like  
that, and fooling around. I don't know if you would ac-  
tually call it—but we just danced together, and so on and  
so forth.

Q. I show you these snapshots and I ask you if it is not  
a fact that these snapshots were taken on the boat coming

*F. Sorrentino, for Gov't, Cross.*

484 back from Virginia Beach? A. That is true. Of course they were.

Q. These were the boys with whom you and Betty had an affair; am I correct? A. That is true.

Q. Kay wasn't with you on that trip, was he? A. No, he was not.

Q. Yet he paid your expenses, didn't he? A. Well,

Q. Did he? A. It was our money. Gosh.

Q. Did he, Mrs. Sorrentino, give you the money to go there? A. Well, no. It was our money that took us.

485 Q. Didn't you tell me that he paid your way down there? A. Well, I was with the man. After all, I am giving him money, so naturally he isn't giving me anything for nothing.

Mr. Todarelli: I offer these in evidence.

Mr. Hilly: No objection.

The Court: They will be received.

(Marked Defendant's Exhibit A.)

Q. Did there ever come a time when Kay discovered these photographs that have been marked in evidence as Defendant's Exhibit A? A. What is that? Did he discover them?

486 Q. Yes. A. Why, I showed them to him. Nothing to hide. Both of us girls. He thought I looked rather nice in the pictures.

Q. Did you tell him you had an affair with these boys? A. No, I said we were fooling around with them, and stuff like that.

Q. Didn't he accuse you— A. Betty told him.

Q. Pardon? A. Betty probably told him.

Q. Didn't he accuse you of having an affair with them?

A. No, he said nothing about it, nothing.



*E. Sorrentino, for Gov't. Cross.*

Q. What were the names of those sailors? By the names, I mean the first names. A. Well, the one that I was—one was named Scotty Hughes and the other one I don't quite remember what his name was. 487

Q. Do you remember the first name? A. Certainly.

Q. The other one's first name; I say, do you remember the other one's first name? A. No, I forget now.

Q. Did you take a trip with Kay to Schroon Lake? A. Yes. Up-State. Yes.

Q. Up-State. A. Yes.

Q. Did you also go with him to Atlantic City? A. Yes, sure. 488

Q. Did you also drive down with him to Virginia before October, 1941? A. No. Not that I remember.

Q. You did not? A. No.

Q. Didn't you go down to Florida with him early in March or April, 1941, and stay with him and stay there about one week? A. That is true.

Q. Didn't you drive down with Kay? A. Yes.

Q. Pardon? A. Yes, I did.

Q. Well, I did not quite understand you, Mrs. Sorrentino. A. Yes, I did.

Q. Is that the trip that you didn't remember a moment ago? 489

The Court: You asked her if she went to Virginia and she said no.

Mr. Todarelli: Florida.

Mr. Hilly: The record won't bear that out.

The Court: You said to Virginia.

Mr. Todarelli: Let me start all over again.

Mr. Hilly: I object to him starting all over again, if your Honor please.

*E. Sorrentino, for Gov't, Cross.*

490

The Court: She has admitted the trip now. We understand that.

Mr. Todarelli: That is what I say.

Q. You did go to Florida with him in the early part of 1941? A. Yes, I did.

Q. Now, isn't it a fact that when you went to Schroom Lake and Atlantic City and down to Florida you stayed in nice places with him, didn't you? A. Yes, I did. No, we didn't stay any place overnight—gee, I don't know, I don't remember, to tell you the truth. They were nice, decent, I mean they were clean, nothing wrong with them.

491

Q. Did you go to Washington with him? A. Yes, I did.

Q. How long did you stay in Washington? A. About two or three hours I guess. About that. Something like that.

Q. Are you sure it wasn't one or two days? A. No, no, no.

Q. Page 90. Weren't you asked, "Did you go to Washington with him? A. Yes.

"Q. How long did you stay away? A. In Washington I stayed for about a day and a-half to two days, I guess."

A. Where is that? When did I say that?

492

Q. At the trial before Judge Porterie, August, 1943. A. Yes.

Q. Do you remember being asked those questions and did you give those answers? A. We stayed outside of Washington in, what do you call those, motels or something like that. And I don't know if it was in Washington. I know he went there to see somebody about something.

Q. How long did you stay on that trip? Was it two or three hours, as you testified, or was it one or two days? A.

*E. Sarrentino, for Gov. T. Cross.*

He went right in to see about his business. I was there about three hours, I waited for him outside.

493

Q. You waited for him three hours, for his business, and you did stay in Washington one or two days? A. No. If I said that then I couldn't be—it couldn't be one or two days, because I meant one or two days coming back in New York, because he stopped a couple of times in places.

Q. In other words, I understand you then that when you said that you stayed in Washington for about a day and a half to two days that you meant part of that time was consumed going down and part coming back; is that what you mean? A. Yes.

494

Q. And you did not stay overnight at all? A. Yes, we did. Outside there. I forget just where it was. It was all night. But I don't think it was in the State of Washington, or I mean in Washington.

Q. No. I mean Washington, District of Columbia. A. Yes, that is where I mean.

Q. Did you stay with him there for one or two days? A. No. I was outside of Washington. Pennsylvania, isn't it?

Q. Is that the first time you have ever been in Washington? A. Yes, that is true.

Q. Have you ever been there since? A. No.

495

Q. On these trips to Schroon Lake, to Atlantic City and Washington and Florida, you stayed with him as man and wife, you stayed together as man and wife, didn't you? A. Yes.

Q. And it would be fair to say that he told you he loved you, and you told him you loved him? A. Lot of times we said that to one another.

Q. He was very affectionate, wasn't he? A. Well, I don't know what that has got to do with it.

*E. Sorrentino, for Gov't, Cross.*

496

Q. You were affectionate too, weren't you? A. Well, I suppose I was.

Q. Now, I direct your attention to the trip— A. Which trip?

Q. —that you made in October, 1941, to Florida with Betty and, as you said, with Kay. I think you testified that you left Pennsylvania Station on a train and got off at Baltimore; is that right? A. Yes.

Q. About what time of day was it that you left for Washington, for Florida? A. Miami? Well, it was in the morning.

497

Q. About what time in the morning? A. I don't know. About 11 o'clock or so.

Q. I believe you testified in your statement or, rather, you stated in your statement to Mr. Trost—

Mr. Hilly: Frost.

Mr. Tedarelli: Trost, T-r-o-s-t.

Q. —that you went down on the Champion. A. Yes.

Q. Is that right? A. I guess it was the Champion.

Q. Well, anyway it was a Florida train? A. Yes, it was.

498

Q. Now, Kay had bought the tickets, you said? A. Yes, he bought the tickets.

Q. Were those Florida tickets that he bought? A. Now, I am not sure now. I thought they were.

Q. Weren't those the tickets that were used on the train? A. Yes, they are the same tickets.

Q. And you sat with him on the way down, didn't you? A. Yes.

Q. The three of you sat together? A. Yes.

Q. And didn't he use three tickets? A. Why, yes; he had to.

*E. Surrentino, for Gov't, Cross.*

Q. Then you said you got off at Baltimore? A. Yes.

499

Q. Did you get a stopover on those tickets? A. Did I what? He took care of the tickets; I don't know anything about them.

Q. Did you get a stop-over on those tickets? A. Why, I suppose so. No, I don't think we did either. Not that I remember, because he could always get another train in through Miami.

Q. Pardon? A. He could always get another train through to Miami.

Q. He could always get another train through to Miami?

A. Sure, from Baltimore.

500

Q. Is that right? A. I would think so. Maybe I am wrong. I don't know.

Q. Well, was it the Champion that you boarded here in New York City? A. Well, I thought it was the Champion.

Q. All right. And you got off at Baltimore? A. That is right.

Q. Where did you go? A. Where, to Baltimore? He went over to see his uncle.

Q. Where was his uncle? I don't want the street but, I mean, was it in the City of Baltimore? A. Yes.

Q. Proper, the city proper? A. It is Baltimore, that is all I know.

501

Q. Can you briefly describe the place his uncle had? A. Well, it was a furniture place.

Q. Furniture store, was it? A. Yes. But I wasn't inside, I was on the outside. I am only quoting what he said, that his uncle was in the furniture business and he had to see him about the furniture.

Q. You went to the place with him? A. I was outside,

Q. You were outside? A. Yes.



*E. Sorrentino, for Gov't, Cross.*

502 Q. That is what I say. Was it a regular furniture store?  
A. Well, I couldn't see so good. It looked like a furniture store in there.

Q. You could see it from the street? A. It was an old dilapidated place anyway.

Q. You could see it from the street? A. I don't remember just what the heck it did look like.

Q. What I am asking you is, you and Betty and Kay got off the train at Baltimore and went to his uncle's furniture store, is that right? A. Uh huh.

Mr. Todarelli: The witness indicates by nodding her head.

503 A. (Continuing) Yes, we went to the uncle's furniture store.

Q. Now you say Kay went inside, is that right? A. That is right.

Q. You two girls remained outside? A. That is right.

Q. You could see furniture inside the store from the street, that is all I wanted to know? A. No, I wouldn't say to that. I couldn't say.

Q. What did you see in the place that he went in? A. I don't remember what I saw, it is so long ago. I remember boxes, I remember seeing some boxes.

504 Q. From the street you could see some boxes? A. They had small boxes outside the place, I remember that.

Q. Oh, boxes outside the place? A. Yes. Crates or something.

Q. Where did you and Betty go then? A. We went to a restaurant.

Q. Did you come back to the furniture store? A. Yes, but he wasn't ready yet, so we still hung around.

Q. How do you know he wasn't ready? A. Because he wasn't out in front.

*E. Sorrentino, for Gov't, Cross.*

Q. You didn't talk to him then? A. No.

505

Q. You merely didn't see him there and you assumed he wasn't ready? A. What?

Q. You didn't see him in front of the place so you assumed he wasn't ready? A. Yes, that is right.

Q. Did you look inside the store to see if you could see him in there? A. I don't know.

Q. Pardon? A. I don't know if we did. I think she did; I am not sure, because she was mad. She said, "I wish the heck he would hurry up."

Mr. Todarelli: May I ask to have the answer read?

(Answer read.)

506

Q. By "she" you mean Betty, don't you? A. Yes.

Q. In other words, Betty saw him inside and she said, "I wish he would hurry up"? A. I don't know if Betty saw him inside. I can't say that she did. I don't say that she seen him for sure.

Q. I thought you said that you thought Betty did. A. I didn't say she saw him. She didn't see him. She looked inside.

Q. Excuse me.

Mr. Todarelli: Please read that answer again that

I had you just read.

507

(Answer reread.)

Q. Did you make a mistake there?

Mr. Hilly: There is no mistake there, if your Honor please.

The Court: No. It is perfectly clear to me, Mr. Todarelli.

Mr. Hilly: Positively, your Honor.

Mr. Todarelli: I confess to an astounding stupidity, your Honor.

*E. Sorrentino, for Gov't Cross.*

508

The Court: Well—

Mr. Todarelli: I am sorry. I thought that she said that Betty didn't see him. First she said Betty—

The Court: She says she doesn't know whether Betty saw him or not when she looked in the store.

Mr. Todarelli: Just a moment ago she said positively Betty didn't see him. The first time—

The Court: Go ahead with the examination.

Mr. Todarelli: The first time I asked her.

509

Q. The first time I asked you you said you thought Betty did see him inside the store? A. I thought; I am not sure.

Q. Yes, I understand. I understood that. You thought that Betty did see him. A. But she told me, she says, "I wish he would hurry up."

Q. About how long were you in Baltimore altogether? A. Oh, a few hours.

Q. Well, would it be one, two, three, four or five; how long? A. I don't know. I know we left about later on in the evening for Miami.

510

Q. About how much later on in the evening did you leave? A. Well, it was dark. Let me see now. Well, it could have been 7 o'clock, it could have been, because I know we got in Miami the next morning. Gee, I don't know. About that time I would say. I don't want to say anything that I am not sure of.

Q. What time did you arrive in Miami? A. The following—near noon. I think it was near noon or afternoon. Near noon.

Q. Are you sure it wasn't 6 o'clock in the evening? A. Let me think now. Yes. Yes, that is about right.

Q. Pardon me? A. I think that is about right.

*E. Sorrentino, for Gov't, Cross.*

Q. What is about right? A. That we arrived there some time during the day; I don't remember what time it was. 511

Q. You said about noon. Now is that your best recollection? A. Oh, it could have been in the afternoon some time.

Q. Will you give us the period of time between what it could have been in your mind? A. All I know is that we arrived there—I guess it was in the evening, more toward the evening I think. I never check up. I don't know when it was, it is so long ago.

Q. Don't you remember now as you sit on the witness stand whether you got there in the morning, at noon, in the afternoon or evening? 512

Mr. Hilly: I think that question is objectionable, if your Honor please,—

A. I think it was—

Mr. Hilly: —as already having been answered.

The Court: No. The question is all right.

What is your best judgment, Mrs. Sorrentino, what time you got there that day?

The Witness: I know in the afternoon some time.

The Court: All right. 513

The Witness: Golly, it was—it was 5 or 6 o'clock I remember now. You are right. I remember it was getting late.

Q. On the Champion? A. I don't know if it was the Champion after we changed from Baltimore. I couldn't say.

Q. What did you do when you arrived in Florida? A. Well, we got our baggage, took a cab and went over to the hotel.

*E. Sorrentino, for Gov't, Cross.*

514 Q. Where was the baggage? A. What?

Q. Where was the baggage? A. It was already checked, and he had to get it out.

Q. Out of where? A. Out of the station, from the train; except for our handbags and stuff.

Q. When had that been checked? A. The day before we went.

Q. Who checked that? A. He did.

Q. Did you go with him when it was checked? A. Yes, I did.

515 Q. By the way, did you have a dog with you on this trip? A. I did.

Q. Did he leave from New York with you, the dog? A. Yes, we took the dog right along. We had him with us all the time.

Q. His name was Skippy, is that right? A. That is right.

Q. Did he travel in the baggage car or with you in the coach or the train? A. No. We had a little satchel for him and we had him in that, and then we had—oh yes, I think the baggageman said something about putting him in the baggage car, no dogs allowed, or something like that.

516 Q. Where was he checked? A. I think we took him right to Baltimore, and after that the man said that we had to check the dog. We told the baggageman that he would not bite anybody, and he said it makes no difference.

Q. Isn't it a fact that you got on the train to Florida in the City of Washington? A. No. We got—

Q. And didn't you check Skippy in the City of Washington before you got on the train? A. No. We were in Baltimore.

Q. I show you this paper and ask you if this is not a re-



*E. Sorrentino, for Gov't. Cross.*

Receipt that you signed when you received the dog at Miami, Florida? *A.* Yes, that is my signature. 517

*Mr. Todarelli:* The witness said, your Honor, "Yes, that is my signature."

*Q.* Now, this is a receipt, *Mrs. Sorrentino*, that is required of the passenger when the passenger receives the dog, isn't that right?

*Mr. Hilly:* Objected to, if your Honor please.

*A.* I know we had—

*Mr. Todarelli:* I think that is an objectionable question.

The Court: All right. The question is withdrawn. 518

*Q.* When you received Skippy you signed this receipt, that I am holding in my hand; am I correct? *A.* Yes.

*Mr. Todarelli:* I offer it in evidence.

*Mr. Hilly:* I have no objection.

The Court: It may be received and marked as an exhibit.

(Marked Defendant's Exhibit B.)

*Mr. Todarelli:* May I very briefly point out to the jury what this is, your Honor?

The Court: Yes.

(*Mr. Todarelli* reads from Defendant's Exhibit B to the jury.) 519

*Q.* Is that Miss or Mrs. Joyce Kay? *A.* I got to see what I signed. I just signed the paper. I didn't care what it was or not as long as I got the dog. Miss.

*Mr. Todarelli:* Miss Joyce Kay. 66—the witness is *E. Darrow*.

*Q.* I think perhaps you had better decipher your own handwriting if you will. What is that address? *A.* 66 Northwest 5th Street.

520 Q. 66th? A. Uh, huh.

Q. Is that 66th or 66? A. Well, I don't know. I got it 66th, on there.

Q. That was wrong, wasn't it? It is No. 66 Northwest 5th Street, isn't that it? A. Yes.

Q. Does that refresh your recollection that the dog was checked by you at Washington, D. C.? A. Well, I think it was checked by Betty, but I picked the dog up myself. I don't remember. I can't remember about the dog. To get the dog I had to sign the paper.

The Court: May I see the receipt?

521 Mr. Todarelli: Yes, your Honor (handing).

The Court: We will take our afternoon recess.  
(Short recess.)

Q. I think at recess, Mrs. Sorrentino, we were discussing Skippy? A. Yes.

Q. And I think you testified also that you arrived around 6 o'clock in the evening in Miami? A. Yes.

Q. And that then the baggage was procured by Kay, and you went over to the hotel? A. We all helped with the baggage.

522 Q. Beg pardon? A. I said we all helped with the baggage, and took the baggage back to the hotel.

Q. I am sorry. A. We all helped with the baggage and took it back to the hotel.

Q. And did you spend the night at the hotel? A. Yes.

Q. The three of you? A. Yes.

Q. What did you do the next day? A. Well, we went out and hired a maid, and we had a telephone installed, and he gave us the cards with the name of the hotel on it, and asked us to go out and make sure if we got anything to give the cards out to different people, to pass out the cards.

*E. Sorrentino, for Gov't. Cross.*

Q. That was the next day? A. Yes.

523

Q. In other words, he hired a maid and had a telephone installed? A. Well, we didn't get the telephone right the next day, of course not. We had to wait for it, and that was some of the things that was done, and he helped us put up the curtains and rearrange things around generally.

Q. Did you work during that week? A. No.

Q. You did not work? A. No.

Q. Or did you work? A. I don't know if I took up a customer or not the first week, but I know Betty took two of them, that I am positively sure of, because one of them was from New York City that she said she ran into accidentally.

524

Q. Let me see if I understand you. The day after you arrived at the hotel Kay went about making arrangements for the installation of the telephone, is that right? A. Yes.

Q. And then he gave you some cards and told you to go out and find some customers, is that right? A. No, he said if we went out and bought anything, or when we went out to the stores, and we walked around too, you know, and he says then all this time—in the meantime for the week that he was there and off and on after that he wanted us to pass out these cards.

525

Q. Well, he told you that during the week he was there?

A. Certainly. He told us before we came there, too, about the cards.

Q. And did he tell you also to find some customers during that week? A. No, he didn't say to find any customers.

Q. Well, to hand out the cards? A. Yes, it means the same thing.

*E. Sarrentino, for Gov't, Cross.*

526

Q. Precisely, it means the same thing? A. Yes.

Q. All right. Did he tell you to pass out the cards during that week? A. Yes.

Q. And did you pass out the cards? A. Some.

Q. Yes. I mean now, did you work, so to speak? A. No.

Q. You didn't, but you say Betty did? A. Yes.

Q. That is during the week that Kay was there? A. Yes, sir.

Q. And then he returned to New York? A. Yes, he returned to New York.

527

Q. You said you were quite sure, or very sure I think you said, that Betty entertained some men down there during that week, during that one week? A. Yes, she did.

Q. Do you remember being asked these questions and did you give these answers:

Mr. Todarelli: Page 271, second trial before Judge Porterie.

Q. "Q. Alvin was only one week down in Florida?

A. Yes.

"Q. No prostitution was going on while he was there?

A. No.

528

"Q. After he left was prostitution going on? A. Yes."

A. Well, he didn't see us take customers or anything like that.

Q. Will I read the question again? "Q. No prostitution was going on while he was there? A. No." A. While in the hotel there wasn't any, that is all.

Q. What is your answer, please? A. While he was in the hotel there wasn't any, but probably was at some place, but I know Betty ran into one of these fellows. She ran into him, because he was from New York City, and she

*E. Sorrentino, for Gov't Cross.*

says, "What are you doing here?" And he was a customer of hers from up 156th Street. 529

Mr. Todarelli: With the permission of the Court I am going to reread that first question.

Q. "Q. Alvin was only one week down in Florida?"

A. Yes.

"Q. No prostitution was going on while he was there?"

A. No."

Doesn't that mean was any prostitution going on in Florida while he was there? Doesn't it mean that? A. Well, I know Betty had two customers down there but not in front of him she didn't take them. 530

Q. When you gave that answer before Judge Porterie were you telling the truth? A. Yes, because I didn't tell him anything, not that I remember I didn't, but I know Betty did because she had this one particular fellow I remember, because she had met him and he was a customer of hers in New York City and she says, "What are you doing here?"

Q. Well, after he left did you start to work? A. Surely.

Q. Did you have any friends of your own down there?

A. We made friends, went to different stores. 531

Q. Did you meet anybody there whom you had known before you went to Florida? A. Well, another customer we met, too. He was down there, and he was, you know, from 156th Street also, but he was an old customer like.

Q. When did Kay come back to Florida? A. Well, before Thanksgiving.

Q. And did you and he have a quarrel about a man?

A. Yes, we did.



*E. Sorrentino, for Gov't, Cross.*

532

Q. Who was it? A. Well, a fellow from the delicatessen store. He owned it I guess.

Q. What was his name? A. Harold.

Q. How did the quarrel start? A. Well, Betty wrote him a letter and said that I was giving away free charity and stuff like that, and he came. When he came down he says, "Why don't you open a house and call it charity something." I don't quite remember. He said, "You're nothing but a little chippie."

Q. Isn't it a fact that Harold telephoned while Alvin was there? A. Surely. Harold liked me, naturally.

533

Q. Pardon? A. Harold liked me and called me up.

Q. Harold liked you, or liked him? A. Liked me.

Q. And wasn't Alvin present at the time that Harold phoned? A. Yes.

Q. He was upset about it, is that right? A. I was upset.

Q. I say, he was upset about it, isn't that right? A. No, he knew what the setup was. He did not have to.

Q. Didn't you and he have a fight over Harold? A. Yes, we did.

534

Q. All right. Didn't he tell you to call up Harold and tell Harold that you were married to him? A. I think he—yes, he did.

Q. All right. A. Not like that, though.

Q. Well, didn't he tell you to tell Harold to leave you alone because you were married to him, Alvin Kay? A. I don't remember what the words were, because he was mad because of Harold being there. He didn't want Harold around.

Q. Well, didn't you testify before Judge Porterie—  
Mr. Todarelli: Page 234.

*E. Sorrentino, for Gov't. Cross.*

A. Yes, he called up. I don't know if I called up or had to write him a note of some kind saying I didn't want to see him any more, or stuff like that. 535

Q. You had a dispute also about a girl, too, didn't you, you and Alvin? A. About a girl?

Q. Yes. A. What girl?

Q. Betty. A. Yes, because she was always talking all the time and telling him stories, carrying tales all the time.

Q. You were jealous of Betty, weren't you? A. No, I wasn't, because I had her think that I just couldn't put my finger on it. 536

Q. You were jealous because Betty and Alvin you suspected were having affairs with each other, an affair with each other? A. No, I knew they were having affairs with one another. That I know.

Q. Weren't you jealous of Betty? A. Well, I heard rumors that she was married to him. Somebody had told me that who knew him so long ago, so naturally I started having a fight. Well, I don't see anything, but I told him about it anyhow.

Q. Didn't you accuse him of holding Betty's hand? A. I don't know. I don't remember. 537

Q. Well, perhaps I can refresh your recollection. I will ask you whether or not you were asked this question or questions:

"Q. Did you have a dispute with Alvin about something else while you were there? A. Yes.

"Q. What was that about? A. I was jealous of Betty.

"Q. Were you jealous of Betty? A. Yes.

"Q. Did you accuse him of holding Betty's hand? A. Yes.

*E. Sorrentino, for Gov't. Cross.*

538

Q. Did he deny it? A. Yes.

Does that refresh your recollection that you accused him of holding Betty's hand? A. Oh, I had many a fight with him about her, and this and that, so maybe that is probably one of them.

Q. You had many a fight with him about her, didn't you say? A. Well, not many a fight, argued a little, an argument, surely. I asked him—I said I heard this about Betty and I came and asked him, you know, and told him things.

Q. Did you slap his face at the time? A. What?

539

Q. Did you slap him? Did you slap his face? A. When?

Q. When you accused him of holding Betty's hand? A. No, no, no.

Q. Did you have a violent quarrel with him at the time when you accused him of holding Betty's hand? A. No, not a violent quarrel.

Q. Were you asked these questions and I will repeat two questions so as to lead up to it? A. It was Betty after that.

Q. "Q. Did you accuse him of holding Betty's hand? A. Yes.

540

Q. Did he deny it? A. Yes.

Q. Didn't you slap his face? A. Yes.

Q. There was a violent quarrel, wasn't there? A. Yes."

Were you asked these questions? A. You are talking about the time with Harold?

Q. Well, lest there be any confusion about that, Mr. Sorrentino, I will repeat. We will see if you are talking about Harold.

*E. Sorrentino, for Gov't, Cross.*

"Q. Did you have a dispute with Alvin about something else while you were there? A. Yes. 541

"Q. What was that about? A. I was jealous of Betty.

"Q. Were you jealous of Betty? A. Yes.

"Q. Did you accuse him of holding Betty's hand? A. Yes.

"Q. Did he deny it? A. Yes.

"Q. Didn't you slap his face? A. Yes.

"Q. There was a violent quarrel, wasn't there? A. Yes."

Now, that is not about Harold, is it? A. No, that is about Betty. 542

Q. Now, weren't you asked those questions and didn't you give those answers? A. Well, after there I did know we quarreled different times about Betty. It would not be the first time I slapped his face, so I mean this—

Q. Wasn't it true that you and he did have a violent quarrel about Betty? A. Well, I slapped him in the face I guess. It may be there. I slapped him several times about Betty I know, but I can't remember.

Q. And that is because you were jealous? A. No, that wasn't it at all. She used to carry tales all the time back to him and watching me, just watching and watching, and I couldn't do this and I couldn't do that. 543

Q. You were in love with Alvin at the time; weren't you? A. I was, certainly I was.

Q. All right. Was there a time when you and Alvin had a fight, where he hit you? A. Yes.

Q. When was that? A. About Harold. He accused me of giving away, giving it away for nothing.

Q. And what did you do? A. Well, gosh—

Q. Did you hit him? A. Darn right I did.

*E. Sorrentino, for Gov't. Cross.*

544 Q. And then he hit you? A. Why, I hit him first, you  
and he hit me.

Q. You hit him several times, didn't you? A. Yes.

Q. And then he hit you? A. Yes, he slapped me.

Q. And didn't he tell you at the time he was determined  
to break up this affair of you and Harold? A. Yes.

Q. Pardon? A. Yes, he said, "I am going to break  
up this business of you running around with Harold from  
the delicatessen", that is true.

Q. Mrs. Sorrentino, these customers that you had paid  
you directly, didn't they? A. No, not all the time, some-  
545 times, yes.

Q. Well, isn't it a fact that when you and they were  
alone together that they paid you directly? A. No, not  
always, no, they would come out after. They would wait  
until after and I got it, and I always gave it to Betty and  
she put it away.

Q. I don't mean that. I mean whatever the considera-  
tion was it was given you directly, and then you— A.  
That is right.

Q. —gave it to somebody else, isn't that right? A.  
That is right.

546 Q. And Betty and Kay didn't know what they paid you,  
did they? A. Why, it is a known fact how much they  
paid.

Q. But the fact is that when Kay was in New York  
City after he left you down there in Miami, he was gone  
for a period of approximately three weeks, isn't that right?

A. About that.

Q. Pardon me? A. About that.

Q. About three weeks? A. Yes.



*E. Sorrentino, for Gov't, Cross.*

Q. And during that three weeks, of course, he did not know with whom you were going at all, did he? A. Why, he told me. He says, "Harold from the delicatessen, he can send you customers. Herbie at the hot dog stand, he can send you customers, too." 547

Q. Sure he knew. You are supposed to get in with people in order to meet people, and he knew that, because he saw the delicatessen was a very good place.

Q. But he did not know that Harold was not paying you, did he? A. Well, I don't know. Betty told him—

Q. Was Harold paying you? A. No, he was not.

Q. But Alvin did not know that, did he? A. No. He knew Harold sent me customers from the delicatessen. That was all right, though. 548

Q. When you testified a few minutes ago that he objected to Harold only because Harold was getting charity, as you called it— A. Yes.

Q. —that is not quite so, is it? A. And he was taking me out a lot, too, where I should have been working, and he was taking me out, too.

Q. Isn't it a fact that the real reason that you and Alvin quarreled about Harold was because Alvin resented the attention that Harold was giving to you? A. No. 549

Q. Isn't that right? A. No, that is not so. It was all in the business, no, no.

Q. He was taking you out a lot, wasn't he? A. Certainly.

Q. And by a lot don't you mean almost every evening?

A. No, I don't mean every evening, no.

Q. You only knew Harold three weeks when Kay came down? A. Uh huh.

*E. Sorrentino, for Gov't, Cross.*

550

Q. So, if he was taking you out a lot he was taking you out almost every evening, wasn't he? A. Well, he didn't take me out so awful much, not every night. He took me out enough. Three nights a week is enough I guess.

Q. How many? A. A few? A. Three nights I said may be about. I couldn't see him all the time. He was working.

Q. Three nights a week? A. Yes.

Q. And Kay didn't know whether or not you were being paid or not, did he, by Harold? A. No, he didn't.

Q. All right. Now, on November 11th your place was raided? A. Yes.

551

Q. By the way, did you live at El Chico all the time while you were down there? A. No. We stayed there I think two nights in the Norfolk Hotel right across the street.

Q. And when were those two nights? Were they at the beginning of your stay or at the end or middle of your stay in Miami? A. Now, wait a minute. I am trying to think. Gee, I don't know. I think—I wouldn't say on that because I am not sure.

Q. With relation to the raid, the arrest of November 11th— A. Yes.

552

Q. —did you stay at the Hotel Norfolk before that raid or after that raid? A. Gee, I don't know. Now I am not sure if it was after.

Q. Pardon? A. I am not sure. I can't make a statement on that.

Q. Well, what was the reason for stopping at the Norfolk? A. I think it was—well, because it was hot. I know the cops were all around, and this and that. I don't quite remember. Betty said it was advisable to go and stay at the Norfolk for a couple of nights until things cooled off.

*E. Sorrentino, for Gov't, Cross.*

Q. Then it was after the raid? A. That is when I think it was. That is when I think it was. 553

Q. Your operations were being carried on at El Chico, weren't they? A. Yes.

Q. Yes. A. Yes. What do you mean now, after the raid?

Q. I mean during the entire time you were in Florida. A. Oh, there were lots—well, it was going on at the El Chico, yes.

Q. Yes. And none at the Norfolk? A. No—a couple of times, yes.

Q. By the way, I think you said a couple of days you stayed at the Norfolk? A. I think that is about what it was now. 554

Q. I show you these papers and I ask you if they refresh your recollection as to the dates and as to the length of time that you stayed at the Hotel Norfolk? A. No, even this does not. No, I think it was after this raid, yes. This is dated November 3. Maybe this is forged. I don't know.

Mr. Todarelli: Your Honor, I think that should be stricken. She said, "Maybe this is forged."

The Court: That will be stricken. 555

Mr. Todarelli: Now, on second thought, your Honor, may I withdraw my objection to that and let it remain in the record?

The Court: Very well, if you want it.

Mr. Todarelli: Thank you, sir.

Q. Now, Mrs. Sorrentino, isn't it a fact that you and Betty rented a room at the Hotel Norfolk— A. Yes.

Q. —in Miami, Florida? A. Yes.

*E. Sorrentino, for Gov't, Cross.*

556 Q. And rented it for two weeks, from November 3rd to November 10th, and then from November 10th to November 17th? A. I am not sure of the dates. I can't remember that far back.

Q. But isn't it a fact that you had the room for two weeks? A. No, we did not have the room for two weeks because I only stayed there a couple of days and I didn't like it there.

Q. Well, isn't it a fact, at any rate, that you paid rent for a couple of weeks? A. I don't know what Betty did. I don't know. She could have. I don't know.

557 Q. Would it refresh your recollection— A. I am sure she didn't pay rent for two weeks, though.

Q. (Would it refresh your recollection if I were to ask whether or not the rent of the rooms was not raised at the Norfolk after you had been there some time, or that they were going to raise the rent from \$8 a week to \$12 a week?

A. No, I don't remember.

Q. That does not refresh your recollection? A. No.

Q. Now, on November 11th the raid took place and then you were taken to the station house, is that right? A. What was that question?

558 Q. On November 11th the El Chico was raided and you were taken to the station house? A. Yes.

Q. Is that right? A. That is true, yes.

Q. And you received a suspended sentence of 15 days?

A. No, we were found guilty.

Q. Pardon me? A. We pleaded guilty. We pleaded guilty and they took our fingerprints and we went up in front. Well, they took our fingerprints after and we went in front of the judge because we pleaded guilty, and he gave us 15 days, but they let us out with paying a fine.

*E. Sorrentino, for Gov't. Cross.*

Q. In other words, you did not have to serve the time in jail, is that right? A. That is right, we paid a fine. 559

Q. And right after that you notified Kay? A. Yes.

Q. And he came down? A. Yes, he came down.

Q. Now, when he came down, was it then that you had the fight with him about Harold? A. Yes.

Q. Did he find any writing from Harold to you, or from you to Harold? A. No, he had me write a note to Harold. That is as far as I can remember about it.

Q. Do I understand then that after you and he had the quarrel about Harold he said to you, "You write a note to Harold"? A. Yes. 560

Q. Is that right? A. Yes, he asked me to call him up or something, I don't remember. Something to that effect anyway.

Q. Now, which is it that you remember? A. I am telling you I don't remember which it was, whether—I think he asked me to write him a note, and I don't know if I wrote him a note. Well, if I did I did. I can tell my own handwriting.

Q. And is this the note that you say you might have written (handing witness)? A. Yes, yes, remember this now very clearly. I wrote this at Kay's suggestion. 561

Mr. Todarelli: Do you want to look it over or are you familiar with it (handing to Mr. Hilly)?

The Court: Any objection?

Mr. Hilly: No objection.

Mr. Todarelli: No, your Honor.

The Court: It may be received.

(Marked Defendant's Exhibit C.)

Mr. Todarelli: Well, I will read it to the jury if I may, your Honor.



*F. Sorrentino, for Gov. Cross.*

562

The Court: Let me see it first.

(Mr. Todarelli hands paper to Court.)

(Mr. Todarelli reads Defendant's Exhibit C evidence to the jury.)

Q. Did you see Harold after that? A. Yes, at the delicatessen's.

Q. Did you go out with him after that? A. No.

Q. Did you go out with him after Kay returned to New York? A. (Witness shakes head.)

Q. How long was he down on the second trip? A. About one week I guess.

563 Q. One week you guess? A. About that.

Q. Pardon me? A. About that I suppose. I don't remember how many days.

Q. Didn't he have a car that he hired down there during the time he remained there? A. Yes.

Q. He took you out, didn't he, in the car? A. Yes, he did.

Q. Every night that he was there? A. I wouldn't say every night, no.

Q. When he left you in Florida and returned to New York, did you return to him all the letters that he had written to you? A. No.

564 Q. Didn't you and he finally decide to part from each other? A. No.

Q. Didn't he say to you that he did not want to see you any more? A. No.

Q. Didn't you then return to him all the letters that he had written to you? A. No, I didn't.

Q. At any rate, there was some ill feeling manifested by him, wasn't there? A. What?

Q. Wasn't there some ill feeling manifested by him? A. By both of us.

*E. Sorrentino, for Gov. L. Cross.*

Q. By both of you. And was it then that you fell out of love with him? A. Well, we got arrested, all three of us, and I stuck to him. 564

Q. But you weren't in love with him; when he left to come back to New York you by that time were no longer in love with him, am I right? A. No, I guess I did in my own way.

Q. When you came back to New York you said you went to 325 East 77th Street? A. Yes, I did.

Q. How long did you stay there? A. Well, I know I slept with him but I can't remember if I stayed there all night; sometimes I think I stayed there all night, and then again I think I left that night. 565

Q. You testified at one trial that you left the same night and went home to your mother; isn't that right? A. I could have been wrong about that because I know it is a long trip to Miami; you just don't rush on to another train when you come back.

Q. The train from Miami got in in the morning, didn't it? A. Yes, it did.

Q. You spent the entire day in New York and you left that night for Canandaigua, isn't that right? A. Well, I can't swear on that because I don't know. 567

Q. At any rate, you and he were washed up, weren't you? A. No.

Q. What did you tell him when you left for Canandaigua? A. Well, I didn't feel too good, and the arrest did upset me, and so I said, well, I was supposed to go up to see my mother for the holiday anyway because she asked me, she asked Betty and I both to come up, and asked him too. But instead I went up.

*E. Sorrentino; for Gior' L. Cross.*

568 Q. Well you mean that the November 11th holiday—the arrest had upset you? A. Sure it did.

Q. You remained— A. Because we kept quarreling, quarreling, quarreling over that, because he didn't do any things for us. He couldn't.

Q. You remained down in Florida about three weeks after the arrest, didn't you? A. That is right. And I wasn't feeling too good either.

Q. You weren't too well physically; isn't that right? A. Probably mentally.

569 Q. You weren't feeling too well physically; isn't that right? A. Yes.

Q. You went to a doctor when you were in Florida, didn't you? A. Yes. To the chiropractor. The one that—

Q. Didn't you go to a medical doctor who told you to get out on the beach and stay there as long as you could? A. I went for an examination to a doctor.

Q. Didn't he tell you that you needed plenty of sunshine? A. But I told him, I said—when you go to a doctor you do discuss this and that and the other thing with him and, sure, they will sell you a bill of goods.

570 Q. Kay took you to this doctor, down— A. No, he did not.

Q. Didn't he ever take you to any doctor down there? A. Yes. I said he took me to a doctor, one of those bone specialists.

Q. When you came back to New York you were upset over the quarrels that you had with Kay, is that right? A. Yes, I was.

Q. You decided to go home to your mother's? A. Yes, just for the holidays.

*E. Sorrentino, for Gov't, Cross.*

Q. You were going to stay there for the holidays, including Christmas and New Year's, am I right? A. Yes. 571  
She expected me to.

Q. So you got there about when? A. You were arrested, you said on December 8th? A. Yes.

Q. Let me withdraw that question. This statement—  
A. I didn't say the date I got arrested because I don't know.

Q. That is why I withdrew the question. This statement is dated December 8, 1941. Now with reference to the— A. That was that night, that was that night.

Q. Then you were arrested on December 8th? A. Yes. 572

Q. All right. A. No. No, wait a minute. Well, it was that evening. It was all done in the evening, and I went to the Post Office and wrote that, or he wrote that.

Q. In other words, this statement, Government's Exhibit 5, was made the same day that you were arrested? A. Yes.

Q. That is December 8th? A. That is right.

Q. December 8th, unless I am mistaken, was on Monday because Pearl Harbor was a Sunday; remember, Pearl Harbor was Sunday? A. Yes, that is right. No, that had to be—that was—no, that was a couple of days before that. That was made probably Friday night. 573

Q. Now wait a minute. A. It was Friday night that I was arrested, now, because I know because my mother came up to see me; so don't tell me anything about it. I know.

Q. Mrs. Sorrentino, let us agree on one thing— A. No. I know when I was arrested because my mother came to see me up in the jail there. And Pearl Harbor was at

*E. Sorrentino, for Gov't, Cross.*

574 -tacked on Sunday, right? So, therefore, I was arrested the previous Friday night.

Q. All right, I am not arguing with you on that. I just wanted you to agree that Pearl Harbor was December 7th on a Sunday, that is all. You made the statement— A. He probably made a mistake, because that very night he asked me all these questions.

Q. I am not arguing with you about that. A. He asked me all these questions the night he arrested me, because I was in the jail and this matron, she came and asked me, "Isn't it a terrible thing," she says, "this Pearl Harbor" 575 has been attacked", and this and that. I didn't know anything about it.

Q. Are you finished? A. Yes.

Q. Pearl Harbor was December 7th, Sunday, right?

A. Uh, huh.

Q. This was dated December 8th, Monday. Now I ask you, when were you arrested, the Friday preceding that?

A. He put a wrong date on it. But it seems to me—

The Court: That is not the question. The question is, when were you arrested, what day were you arrested?

576

The Witness:— I don't know.

Q. How long were you kept in custody before you made this statement, Government's Exhibit 5? A. That very night that I was arrested.

The Court: That is not the question, Mrs. Sorrentino.

The Witness: He asked me the date.

The Court: He asked you how long you were in jail before you made that statement.



*E. Sorrentino, for Gov't, Cross.*

The Witness: As soon as I got there, he started asking me questions. 577

The Court: Strike out the answer. How long were you in jail before you signed that statement, if you know?

The Witness: I don't know.

The Court: You don't know?

The Witness: Yes, I do, but you won't let me answer it right.

The Court: Go ahead and answer it in your own way.

The Witness: As soon as I was taken in custody I was taken to the Post Office, and Mr. Frost sat down, and I said all this to him, and as soon as it was finished, this was probably maybe an hour later, maybe less than that, I don't know, and I signed it. 578

Q. You called him Frost. The fact is it is Trost, isn't it, T-r-o-s-t? A. I don't know. I said Frost.

Q. I am not arguing with you about it. He asked you a lot of questions before he started to write these things out; am I right? A. Yes, that is true.

Q. You didn't write this, did you, except to sign it? A. No. I just signed it. 579

Q. Mr. Trost wrote it out; is that right? A. Yes, sir.

Q. And that was done after he had questioned you for some time? A. Yes.

Q. Where were you arrested, by the way; at your mother's home? A. Yes, I was.

Q. By Mr. Trost himself? A. No. He had another man with him.

*E. Sarrentino, for Gov't Cross.*

580 Q. And the two of them took you down to the Post Office? A. Yes.

Q. Is that right? A. Yes.

Q. Now, between the time that they picked you up at your home and the time that you read and signed this statement, had you been in communication with anybody at all? A. No.

Q. All right. You didn't see Mr. Kay, certainly, did you? A. No, did not.

Q. You didn't see any lawyer? A. No.

Q. You didn't see any friend? A. No.

581 Q. When you left to go back to Canandaigua for the holidays you hadn't discussed with Mr. Kay the possibility of your being arrested on this charge, had you? A. When what?

Q. You hadn't talked about being arrested on any charge like this, had you? A. No.

Q. All right. So that when you made this statement, Government's Exhibit 5, you were telling the truth, weren't you? A. No, I wasn't. I just tried to save him, to save us all.

582 Q. Well, Kay didn't tell you to put any of the things in here that you put in, did he? A. No, he did not. just—

Q. Betty hadn't talked with you, had she? A. No.

Q. The fact of the matter is that Betty came up to see you in jail after this was taken, isn't that right? A. Yes, that is right.

Q. When you said that no threats or promises had been made to you and that you were making this statement of your own free will knowing that it could be used in court—

*E. Sorrentino, for Gov't, Cross.*

against you, that was true, wasn't it? A. What? That I had signed it? Yes, sure, I signed it. 583

Q. Mr. Trost didn't threaten you, did he? A. No.

Q. He asked you to tell the truth, didn't he? A. Well, yes.

Q. Didn't he insist upon your telling only the truth? A. I know. I am sorry I didn't.

Q. Didn't he? Did he not? A. Yes. Well, naturally, he asked me questions, and that is all. He says, "Do you swear this is the truth?" And I says, "Yes, I do."

Q. And when you said, "I have read the foregoing statement of five pages and understand it all and it is all true and correct and therefore I have signed it and placed my initials on each page", wasn't it a true statement? A. No, it was not a true statement. 584

Q. You understood what you were signing, didn't you? A. Yes, sure, I understood what I was signing.

Q. Don't you always tell the truth, Mrs. Sorrentino? A. Well, I wanted to protect him.

Q. Don't you always tell the truth? A. Do I always tell the truth? Do you? Do you?

Q. That is an answer. You refuse to answer that question? A. I am telling the truth now, through this whole trial I am telling absolutely the truth. 585

Q. Did you tell the truth when you had Kay arrested for intimidation? A. Oh, I didn't do that to him. You know that.

Q. You didn't do that? A. No, I didn't.

Q. We will see about that.

Mr. Hilly: I object to the comments of counsel, if your Honor please.

The Court: Yes. That may be stricken.

*E. Sarrentino, for Gov't. Cross.*

586

Mr. Todarelli: I consent to that, your Honor.

The Court: Well, it is stricken whether you consent or not, Mr. Todarelli.

Mr. Todarelli: I think the implied rebuke is merited, too, your Honor.

Q. In the spring of 1941 did you take a trip by automobile from New York to Washington with some fellows that you met in New York whose name you didn't know?

A. Well, that meant him, see, but I just said somebody else because I didn't want him to be implicated.

587

Q. Oh, that meant him. Does it refresh your recollection that the day you came back to New York was December 2, 1941? That is what the statement says, "I was in Miami from the latter part of October, 1941 to December 2, 1941." Is that right? A. Uh huh. It must have been it. I said it. The dates, I don't know, I can't remember dates very well, never did; never bothered me.

Q. Does it refresh your recollection that you got to New York on December 3, 1941 at 12:08 p. m.? A. No, it does not refresh my memory because I am telling you I don't really remember. If I did I would say so.

588

Q. Does it refresh your recollection when you said that you left New York City on Saturday, December 6th, and came by train to Canandaigua, New York, "where I have been ever since"? A. Well, if it is there I have said it. I signed it, didn't I?

Q. Now, isn't it a fact that there wasn't any matron who came in to you in jail and said how Pearl Harbor had been— A. Oh, yes, there was.

Q. Isn't it a fact that you were not in jail at that time and you didn't get in jail until December 8, 1941, the same day that you signed this statement? A. Well, I guess so.

*E. Sorrentino, for Gov't, Cross.*

then. I remember the matron said, "Isn't it terrible how they attacked Pearl Harbor." I remember her saying that.

589

Q. At the time that you signed this statement, you say you were in love with Kay? A. Yes, certainly, I wanted to protect him.

Q. When did you fall out of love with Kay? A. I don't know. That is not any question to ask.

Q. When? A. I don't know when it was. It was after that, anyway.

Q. How long after? A. Oh, some time after. I don't know how long it was.

Q. Were you still in love with him at the time that you were in Jacksonville? A. Certainly.

590

Q. Were you in love with him after he got you out on bail down there, as you said? A. Uh huh. I must have because I stuck to him.

Q. Didn't there come a time when Kay said to you that the case had been dismissed in Florida, that the District Attorney had told him to keep away from you; do you remember that? A. No.

Q. And that he gave you \$150 and said, "Now, we better call it quits, you go your way and I will go my way"? A. That is a lie right there and then. That is not true.

591

Q. Wasn't that when you fell out of love with Kay? A. No, that is not true. I told you that is not true, that is all. Ask me another question.

Mr. Todarelli: Now, your Honor, I am going into a new tack and I was wondering—

The Court: Yes. We will take a recess now until tomorrow morning.

(Adjourned to April 16, 1947, at 10:30 a. m.)



*E. Sorrentino, called for Gov't.*  
*L. Barbash, for Gov't, Direct.*

592

UNITED STATES OF AMERICA,  
 vs.  
 ALVIN KRULEWITCH.

New York, April 16, 1947.  
 10:30 o'clock a. m.

Trial resumed.

ELIZABETH SORRENTINO, resumed the stand.

593

Mr. Hilly: With the Court's permission, I would like to excuse this witness and call out of order three other witnesses or four other witnesses.

The Court: You may.

(Witness temporarily excused.)

LEO BARBASH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

594

Q. Mr. Barbash, what is your occupation, sir? A. I am the owner of a U-Drive-It and a parking lot manager.

Q. Where is your business located? A. 261 North east First Street, Miami.

Q. In October, 1941, did you have that business? Yes, sir.

Q. Now I show you these two papers here and ask you if they are records of your business? A. That is right. My own handwriting.

*L. Barbash, for Gov't, Direct.*

Q. In your own handwriting. Are they records kept in the regular course of business? A. That is right. 595

Q. Was it part of the regular course of your business to keep such records? A. We have to; yes.

Mr. Hilly: I will offer these in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: Any objection, Mr. Todarelli?

Mr. Todarelli: No objection.

The Court: They may be received in evidence.

(Marked Government's Exhibits 6-A and 6-B.)

Q. Now, Mr. Barbash, do you know a man by the name of Alvin Krulewitch? A. Yes. 596

Q. By what name do you know him? A. Al Kay.

Q. Do you see him in the court here? A. Yes.

Q. Where do you see him, Mr. Barbash? A. Over there (indicating.)

Mr. Hilly: Would your Honor direct the reporter to indicate on his record that this witness has identified the defendant Alvin Krulewitch?

The Court: Yes. He may so indicate.

Q. Now, looking at Government's Exhibit 6-A in evidence, would you tell me, did you during the month of October, 1941, see Alvin Kay? A. I saw him on that date when he came in to sign the card. 597

Q. What date was that? A. That was October 24th.

Q. Was there anyone with him at that time? A. I don't remember. I don't think so. I think he came himself to get the car.

Q. For how long a period of time did he have the car at that time? A. According to this contract, he had the car for two days.

*L. Barbash, for Gov't, Direct.*

598 Q. During the period of time that he had the car, did you see him during that time? A. No, I didn't see him during these two days. When he checked the car in I wasn't there either; he checked it very late at night.

Q. During that time, did you at any time meet him away from your place of business? A. Not during these two days.

Q. Now looking at Government's Exhibit 6-B in evidence (handing), during that time did you meet Alvin Karpis?

A. Yes.

599 Q. And when did you see him, sir? A. He came over in the evening, one evening during those six days, about 10 or 10:30 in the evening, he turned the car in for the evening and asked me to have some coffee with him next door.

Q. Was there anyone with him at that time? A. Yes, there was a girl.

Q. Did you learn her name? A. Yes, I did.

Q. What was her name? A. Her name is Joyce.

Q. Have you seen Joyce recently, Mr. Barbash? A. Yes, I have.

Q. When was the last time that you saw her? A. Just a few minutes ago, when she came out of this courtroom.

600

Mr. Todarelli: We will concede that he means the witness, Mrs. Sorrentino, if that will help.

The Court: Very well.

Q. When was this second occasion that you saw him, what was the date? A. I can't quite place the date, but it was within a day or two when he checked the car in, and that would have been about November 27th he should have checked the car in, but it was a day or two before that when he brought the car in for the evening.

Q. Had he rented the car from you during that period of time? A. He rented the car for six days.

*L. Barbash, for Gov't, Direct.*

Q. When was the first day that he rented it? A. On November 21st. 601

Q. That was during what year, Mr. Barbashi? A. 1941.

Q. October and November? A. Yes.

Q. And on Government's Exhibit 6-A, this signature that appears down here (indicating), is that in your handwriting? A. This signature?

Q. Yes. A. No, that is Al's signature.

Q. That is his signature? A. Yes.

Q. And with respect to Government's Exhibit 6-B? A. That is his signature also. I don't sign the receipt. 602

Mr. Hilly: I have no further questions of this witness.

Mr. Todarelli: Before I cross examine the witness may I briefly explain to the jury what these are?

The Court: Certainly.

Mr. Todarelli: 6-A, ladies and gentlemen of the jury, is a rental receipt showing that an automobile—

What kind of an automobile was it?

The Witness: I believe it was a Packard.

Mr. Todarelli: —was rented on October 24, 1941, at 9:00 p. m., and then it gives the license number, and that it was used for two days, eleven days for two— 603

The Witness: \$11 for two days.

Mr. Todarelli: \$11 for two days, a hundred miles excess at the rate of 10 cents per mile.

The Witness: That is correct.

Mr. Todarelli: And then it shows that it was driven 178 miles, and that it was returned by Al Kay.

The Witness: Yes, sir.

L. Barbash, for Gov't, Cross.

604

Mr. Todarelli: And the other receipt shows that it was rented at 8:00 p. m. on November 21, used for 215 miles.

The Witness: For six days.

Mr. Todarelli: Six days, and rented by Al Kay.

CROSS EXAMINATION by Mr. Todarelli:

Q. Is that a fair explanation of that, Mr. Barbash? A.

Yes, sir.

Q. And when you say you rented— A. I rented it.

Q. Did you personally rent it? A. That is right, my handwriting.

605

Q. That is your handwriting, Mr. Barbash? A. Yes.

Q. You know Mr. Kay? A. Yes.

Q. You have always known him as Mr. Kay? A. I have always known him as Mr. Kay.

Q. And you know that he did run an advertising agency? A. That is right.

Q. Called the Kay Advertising Agency? A. That is right.

Q. How often did you see him before October, 1941? A. I saw him for several years on and off.

606

Q. Almost every year? A. Almost every year, yes.

Q. Whenever he would come to Miami, wouldn't he rent cars from you? A. No.

Q. Not always? A. This is one occasion, but he always came in his own car.

Q. You were also a personal friend of his? A. I was a friend of his, yes.

Q. Have dinner with him? A. I would see him occasionally when he was parking the car on my parking lot.



*L. Barbash, for Gov't, Cross.*

Q. When he drove down with his car he parked it on your parking lot? A. That is right. 607

Q. You had never seen this girl Joyce before, had you?  
A. No.

Q. As I understand it, and see if I am correct, what happened is that Mr. Kay rented a car for two days on October 24 and then rented a car for six days on November 21? A. That is right.

Q. Do you know the members of his family? A. Yes.

Q. And do you know other people who know him down in Florida? A. Well, people have known him, but I don't know who they are. 608

Q. I say, do you know people who know him? A. My brother knows him, yes.

Q. I see. A. Knows him from meeting him in a business way.

Q. Yes. Did you know he was in the business of due bills? A. That is right.

Q. And you know his family, do you? A. I know his mother. I used to know his father when he was alive. I know his brother, yes. I met him in Florida.

Q. Do you know his reputation for honesty and fair dealing? 609

Mr. Hilly: Objected to, if your Honor please.

The Court: I do not think you can qualify this witness on that.

Mr. Todarelli: All right, sir. I will withdraw it.

Q. Did you ever hear anything bad about him?

Mr. Hilly: Objected to, if your Honor please.

The Court: Oh, I will let him answer that question.

The Witness: Will you repeat the question?

*C. B. Brown, for Gov't, Direct.*

610 Q. Did you ever hear anything bad about him? A. The only thing I heard about him was that he used to play the horses too much. That is all.

Mr. Todarelli: All right. That is all.

Mr. Hilly: I have no further questions. Thank you.

(Witness excused.)

Mr. Hilly: Mrs. Blumberg.

611 CORA B. BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mrs. Brown, in October of 1941 your name was Cora Blumberg, is that correct? A. That is right.

Q. Now, are you the owner of the El Chico Hotel located at 66 Northwest 5th Street? A. Not any more.

Q. In October of 1941 were you the owner of the El Chico Hotel? A. Yes, I was.

Q. And that was located at 66 Northwest 5th Street, Miami, Florida, is that correct? A. That is right.

612 Q. I show you Government's Exhibit 3 for identification and ask you if that is a picture of the El Chico Hotel? A. Yes.

Q. And that picture shows the hotel as it was in October of 1941, is that correct? A. That is right.

Mr. Hilly: I will offer this in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It may be received.

(Government's Exhibit 3 for identification received in evidence.)

*C. B. Brown, for Capt. T. Direct.*

Q. Now, in October of 1941 did you rent the hotel, the El Chico Hotel? A. Yes. 613

Q. And to whom did you rent it? A. To Mr. Kay.

Q. Do you see Mr. Kay in court, Mrs. Blumberg? A. Yes.

Q. Where do you see him? A. Right there (indicating).

Mr. Hilly: Will your Honor direct the reporter to indicate on his record that this witness has identified the defendant Krulewitch?

The Court: Yes, he may so indicate.

Q. Now, was that the first time that you met Kay in October of 1941? A. Yes, that is correct. 614

Q. And where did you meet him? A. He came to my house.

Q. And did you have a conversation with him at that time? A. Yes. I had a sign for rent on the building.

Q. You had a sign for rent on what building, Mrs. Brown? A. On the El Chico, and he was sent to me as being an owner, and he wanted to rent the place.

Q. And at that time did you have a conversation with him? A. Yes. He wanted to know if we could close the deal right then.

I said no, we should wait for the next morning and have it closed with a notary and a lease as it should be. 615

I asked him if he had seen it and he said no, not inside.

Mr. Todarelli: Your Honor, calling the witness out of order is rather unexpected, because I left some of the papers in my office that I want over here, so if I may send some one over to my office and have them brought here.

Mr. Hilly: Mr. Todarelli's office is only nearby, your Honor.

Mr. Todarelli: Yes.

*C. B. Brown, for Gov't, Direct.*

616

Mr. Hilly: And it might serve his convenience if your Honor granted a five-minute recess, because I do not want to proceed until Mr. Todarelli—

The Court: Well, do you want the papers here for cross examination, Mr. Todarelli?

Mr. Todarelli: Yes, your Honor.

Mr. Hilly: I will suggest then that it might be better, your Honor, if we had a short recess.

The Court: All right. We will take a short recess.  
(Short recess.)

617

Q. Now the following day, Mrs. Blumberg, did you see Kay again, after this conversation with him at your home?

A. Yes.

Q. Where did you meet him? A. I met him at the Elks Club to fix up a lease.

Q. Was there anyone else present at that time? A. Mr. Neville, the broker.

Q. Was a lease signed at that time? A. Yes; we went in the McAllister Hotel where there was a notary.

618

Q. I show you this paper here and ask you if you can tell me what that is. A. That is the lease that I signed. That is my signature.

Q. Your signature is on the lease? A. Yes.

Q. Did Mr. Kay sign it at that time? A. Yes.

Q. Was that signed in your presence? A. Yes.

Q. Did Mr. Neville sign as one of the witnesses? A. He did.

Mr. Hilly: I will offer this in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

*C. B. Brown, for Gov't, Direct.*

The Court: It may be received and marked as an exhibit. 619

(Marked Government's Exhibit 7.)

Mr. Hilly: With your Honor's permission I would just like to read it to the jury.

(Mr. Hilly reads from Government's Exhibit 7.)

Q. Now, at the time the lease was executed was any money paid? A. Yes.

Q. How much was paid? A. Three hundred.

Mr. Todarelli: How much?

The Witness: Three hundred.

(Mr. Hilly continues reading from Government's Exhibit 7.) 620

Q. Now, the lease carries the date October 15, 1942. On the bottom it was executed October 2, 1941. That date October 15th 1942, is that the correct date, or should it not be October 15th— A. That was '41.

Q. And the date that reads January 2, 1943, that also is a typographical error and should be January 2, 1942, is that correct? A. Yes.

Q. And the date February 2, 1943, that should be February 2, 1942, is that correct? A. Yes.

The Court: Those are the documents that make business for lawyers. 621

Mr. Todarelli: Will the Court take judicial notice that I did not draw that up?

The Court: Did you have a lawyer draw that lease, Mrs. Brown?

The Witness: No.

Q. Do you know who drew the lease, Mrs. Brown? A. I think the notary did.

Q. That is Grace M. Adair that appears on the back of the lease, is that correct? A. Yes.



*C. B. Brown, for Gov't, Direct.*

622

Mr. Hilly (reading from Government's Exhibit 7): "Witness our hands and seals the 2nd day of October, 1941, signed, sealed and delivered in the presence of;" and then on the left-hand side of the page, "Charles E. Neville," on the same line but on the right-hand side, "Cora D. Blumberg," and above that "lessor." Then underneath that on the left-hand side of the page is the name "Grace M. Adair," and on the same line but on the right-hand side of the page "Pauline Hillson, per A. K."

Q. Now, that "Pauline Hillson, per A. K.", who signed that? A. Mr. Kay.

Q. Now, at the time the lease was executed was a key given for the premises? A. Yes, we gave keys.

Q. Whom did you give the key to? A. Mr. Kay.

Q. Now, let me direct your attention to about three weeks, a period of three weeks after the execution of this lease. Did you at that time see Kay? A. Well, I don't know exactly what time it was, but I did see him shortly after that.

Q. And where did you see him? A. In the building.

Q. And by "in the building" what do you mean? A. Well, I had a phone call that furniture was being taken out. Out of what building is that? A. 66 Northwest 5th Street.

Q. You mean the El-Chico Hotel? A. Yes.

Q. And did you go over to the building? A. Yes.

Q. Did anyone go with you? A. Mr. Neville.

Q. And did you have a conversation with anyone at that time? A. Well, there was a woman up in the hall and I asked if Mr. Kay was there and she said he was out of the city.

*C. B. Brown, for Gov't, Direct.*

Q. And how many women did you see at that time? A. 225  
She is the one I talked to, but there was one other there in the hall.

Q. Now, I show you Government's Exhibit F in evidence and ask you if that is a picture of the woman that you spoke with? A. It looks like her, but it is a very bad picture.

Q. The other woman that was present, have you seen her since that time? A. I wouldn't recognize any other woman being there. I know there was a woman that went through the hall into another door, but I would never know her if I saw her. 626

Q. Now this woman that was there, you say she told you that Kay was out of town, is that right? A. That is right.

Q. Did you have any conversation with her? A. Well—  
Mr. Todarelli: I object to this.

Mr. Hilly: I am just asking her if she had any further conversation with her.

Mr. Todarelli: All right.

Q. Did you have any further conversation with her? A. While I was speaking to her Mr. Kay came up—

Mr. Todarelli: Just yes or no, your Honor.

The Witness: Yes.

Mr. Todarelli: All right. 627

Q. During this conversation did anything occur? A. While I was speaking with her Mr. Kay came in.

Q. And did you have any conversation with Mr. Kay?  
A. Yes, I told him that I had a phone call about furniture being moved out, and asked him what about it.

And he said not to worry, that when he left he would leave better furniture there in place of it.

*C. B. Brown, for Gov't, Direct.*

628

Q. Was there any conversation at that time as to where the furniture came from that was being moved in? A. He didn't tell me but she did.

Q. And did this conversation with this woman take place in the presence of Kay or was that before he came in? A. Before he came in she told me he had had furniture shipped in there—

Mr. Todarelli: I object to this, your Honor, and move that it be stricken out.

The Court: That will be stricken, everything after "Before he came in."

629

Q. Did you ever learn this woman's name? A. Well, I heard that she was Pauline Hillson.

Mr. Todarelli: I move that that be stricken out.

The Court: It may be stricken.

Did you learn it from her, Mrs. Brown, or from somebody else?

The Witness: Well, it was just understood that she was Pauline Hillson, the name that was on the list.

Q. You mean on the lease? A. On the lease.

630

Mr. Hilly: Now I again ask the question, if your Honor please.

Q. Will you tell us the conversation with respect to the furniture at that time as to where the furniture that was being moved in was purchased?

Mr. Todarelli: I object to this, your Honor, no positive identification as to who it was.

The Court: Well, is Pauline Hillson Betty Sookerman?

Mr. Hilly: Yes, your Honor.

Mr. Todarelli: Yes.

*C. B. Brown, for Gov't, Direct.*

The Court: They are one and the same people? 631

Mr. Hilly: Yes, your Honor.

The Court: I think under the conspiracy count that is permissible.

Mr. Todarelli: I point out that there has been no identification of her as Betty Sookerman.

The Court: Can you show that later on, Mr. Hilly, that Pauline Hillson is Betty Sookerman?

Mr. Hilly: Well, if your Honor please—

Mr. Todarelli: I am afraid I did not make myself clear. We do not deny that Betty Sookerman was known as Pauline Hillson, but we do say that this witness has not identified anybody as Betty Sookerman or Pauline Hillson and, therefore, the conversation she is about to give is with someone who has not been identified as Betty Sookerman. 632

The Court: All right. You may answer.

Q. Will you please tell us the conversation you had with this woman with respect to where the furniture had been purchased? A. When I first went up there I told her that I had a phone call about furniture being moved out, and she got very excited. She said she knew nothing about it. 633

I said, "Where is Mr. Kay?" She said he was out of the city, and I saw new furniture all sitting in there. I said, "When was this brought in?" She said that Mr. Kay had shipped down from Baltimore, from an uncle.

And then he came upstairs and he said to me not to worry, that he would leave furniture in there in the place of what they had gotten rid of that belonged to me.

Mr. Hilly: If your Honor pleases, if you will just bear with me a minute.

*C. B. Brown, for Gov't, Cross.*

634 Q. Now, at the time this lease was executed, that is Government's Exhibit 7 in evidence, was Pauline Hillson present? A. No.

Mr. Hilly: I have no further questions of this witness, Mr. Todarelli.

The Court: May I see the exhibit, please?  
(Exhibit handed to Court.)

CROSS EXAMINATION by Mr. Todarelli:

Q. Mrs. Blumberg, I show you two photographs, and I ask you if they are fair representations of the El Chico  
635 Hotel and surrounding property at or about the time that this lease, Government's Exhibit 7, was signed?

The Court: Here it is (handing to Mr. Todarelli).

A. Oh, yes.

Mr. Todarelli: I offer them in evidence.

Mr. Hilly: No objection.

The Court: They may be received and marked as exhibits.

(Marked Defendant's Exhibits D and E.)

Q. Mrs. Brown, you have testified that you talked with Mr. Kay the night before the lease was signed? A. Yes.

636 Q. That then would be— A. It was not really night. It was toward evening, very late in the afternoon.

Q. Late in the afternoon? A. Yes.

Q. Around 5 or 6 o'clock? A. Something like that, something like that.

Q. And you talked with him about renting the place is that right? A. That is right.

Q. Did he tell you at that time that he was renting the place for Pauline Hillson? A. Well, he said that he



*C. B. Brown, for Gov't, Cross.*

was going to live there and they were going to take it as a hotel or something. 637

Q. Did he tell you that he was renting it for Pauline Hillson? A. I am talking now about the first time you ever spoke to him on October 1st. Did he tell you that he was renting it for Pauline Hillson? A. Yes.

Q. He did? A. Well, I understood that the two were taking the place—

Q. Never mind what you understood. Please just tell me did he mention the name Pauline Hillson. A. Well, I don't remember what name he mentioned. I don't remember that, but he was taking the building. 638

Q. Do you remember testifying in this case in August of 1943? A. I was here, yes.

Q. Pardon me? A. I was here.

Q. The question is, do you remember testifying in August of 1943 in this court? A. Yes.

Q. All right. Do you remember these questions being asked of you and did you give these answers:

Mr. Todarelli: And I am reading from the bottom of page 174 at the trial before Judge Porterie, re-direct examination by Mr. Wallace. 639

Q. "Q. Mrs. Blumberg, this"—meaning the lease—"was signed on the 2nd day of October? A. Yes.

Q. The lease does not start until the 15th? A. That is correct.

Q. Did he mention anything to you the first night you saw him about Pauline Hillson, or anyone else? A. No, we were to go down the next morning and sign the lease. Mr. Neville asked him where this Pauline Hillson was and if he had a power of attorney to sign for her and he said he did.

*C. B. Brown, for Gov't, Cross.*

640

Q. Isn't it true that the first time he mentioned about Pauline Hillson was the following morning when he came to draw up the lease? A. Yes."

Were you asked those questions— A. I remember Mr. Neville asking him at the notary—

Q. Madam, please. A. It has been a long time ago.

Q. Madam, please. Were you asked those questions and did you give those answers? A. If you have them there I answered.

Q. Then at that time you remember that Pauline Hillson's name was not mentioned until October 2nd, the day  
641 the lease was signed, is that right? A. If that is what you have there, that is right.

Q. Now, as a matter of fact, that was not correct, was it, that you did not hear the name Pauline Hillson mentioned on October 1st, was it? A. I don't know.

Q. The fact of the matter is that on October 1st Kay gave you a deposit of \$25, didn't he? A. Yes.

Q. Didn't he? A. Yes, he gave a deposit.

Q. That was on October 1st? A. Yes.

Q. Do you remember to whom that deposit was made  
642 out? A. To who?

Q. Yes, the receipt, rather. Did you give him a receipt? A. Why, I must have given it to Mr. Kay, because he is the party that gave me the money.

Q. And do you remember to whom it was made out? A. No, I don't remember.

Q. In whose name? A. No, I don't remember.

Q. Was it made out to Pauline Hillson, or was it made out to Kay? A. I usually give a receipt to the party who give me the money.

*C. B. Brown, for Gov't, Cross.*

Q. And in this case did you give a receipt to Alvin Kay? 643

A. Yes.

Q. Now, I show you a photostat—

Mr. Todarelli: Please let me have the original, will you, Mr. Hilly?

Mr. Hilly: I haven't it here now.

Q. I show you a photostat of a receipt and I ask you if that is your handwriting there? A. Yes, that is my signature.

Mr. Todarelli: I offer it in evidence.

Mr. Hilly: No objection.

The Court: It may be received and marked as an exhibit. 644

(Marked-Defendant's Exhibit F.)

(Mr. Todarelli reads from Defendant's Exhibit F. to the jury.)

Q. Now it is a fact, isn't it, Mrs. Blumberg, that the receipt was made out to Pauline Hillson? A. Well, it reads that way.

Q. Is there any doubt in your mind whatever that you signed that paper? A. Not a bit.

Q. Is there any doubt that you made out every word or letter that is contained on this paper? A. Yes. 645

Q. There is a doubt. A. No. It is my writing.

Q. Then you did give it to Pauline Hillson, didn't you?

A. I didn't give it to Pauline Hillson.

Q. You made out the receipt in the name of Pauline Hillson, that is right, isn't it? A. Well, the receipt says so, so it is right. You are looking at it and so am I.

Q. Now, aren't you clear in your recollection that on the first day, October 1, 1941, Kay told you about Pauline Hillson? A. I don't remember.

*C. B. Brown, for Gov't. Cross.*

646 Q. Didn't he tell you on October 1st that he was down there to rent a place of Pauline Hillson? A. He said he was looking for a place and he didn't say who at the time he first came to my house.

Q. Who did you think Pauline Hillson was then? It wasn't Kay, was it? A. Mr. Neville asked him if he had any right to sign for another party, and he said he had power of attorney.

Q. Mr. Neville wasn't present on October 1st, was he? A. Not when he came first.

647 Q. On October 1st it was just you and Kay? A. That is right.

Q. What I want to know is, who did you think Pauline Hillson was on October 1st? A. I don't know.

Q. Didn't he tell you who she was? A. What do you mean, did he tell me who she was?

Q. Didn't Kay tell you who Pauline Hillson was on October 1st? A. No.

Q. He didn't? A. No.

648 Q. Did he tell you that it was someone that he was renting this place for? A. I understood the two were taking the place themselves.

Q. Never mind what you understood. I want to know this, Mrs. Blumberg, please: Didn't Kay tell you on October 1st that he was renting this El Chico Hotel for Pauline Hillson? A. I don't remember what he said at that time.

Q. When you testified at the last trial that the name Pauline Hillson was not mentioned on October 1st you were mistaken, were you not? A. I evidently was.

*C. B. Brown, for Gov't, Cross.*

Q. All right. When did this conversation take place about the furniture? A. Well, it was around two or three weeks later, something like three weeks. I don't remember any days and dates that far back. 649

Q. Two or three weeks later after October 1st, you mean? A. Yes.

Q. In other words, somewhere between the 15th and the 22nd? A. I should say it was around the last part of the month. I could be mistaken.

Q. And you said that you saw Mr. Kay there at the time that you talked about the furniture? A. Yes.

Q. Would that be between the 24th and the 26th of October? A. It is whenever I was called to go down there, and I remembered no date or days. 650

Q. By the way, did Mr. Kay tell you who he was on October 1st? A. Did he what?

Q. Tell you who he was. Did Mr. Kay tell you who he was? A. I understood he was Mr. Kay, and I didn't know until later that he wasn't.

Q. Did he tell you that he had a business called the Kay Advertising Business? A. He might have mentioned something of what he was doing. I don't remember anything about it. 651

Q. Didn't he tell you— A. I remember no conversation. That has been too long ago, and I had no reason for remembering it.

Q. Well, perhaps I can refresh your recollection. Were you asked these questions and did you give these answers, at page 175:

“Q. He gave you his card, didn't he, Alvin Kay? A. I think he gave it, Mr. Kay.



*C. B. Brown, For Gov't, Cross.*

652 "Q. And Alvin Kay was printed on the card, that is his name, and he had on it Kay Advertising Company? A. He did at the office. I was asking him, and he gave Mr. Neville his card.

"Q. He said who he was? A. Yes.

"Q. Is that so? A. Yes."

Do you now remember? A. If you have that there and I answered it at that time, that is right; but I don't remember from then until now. It has been a long time, and I don't remember.

Q. Then it is correct that he did give you his card? A. 653 I have always answered truthfully.

Q. And he told you he was in the advertising business? A. I don't know what business he was in.

Q. Don't you remember now, after reading these questions and answers to you— A. No, I don't remember.

Q. You don't remember? A. No.

Q. Is your memory unclear? A. I don't try to remember things in the past—

Q. I understand. A. (Continuing)—that don't concern me any longer. When I am through, I am through.

654 Q. So that you may be mistaken about a lot of things that go back as long as that, is that right, Mrs. Blumberg? A. You have it there, and I answered truthfully at the time, and since then I don't remember.

Q. Now, just answer the question, please. You may be mistaken about a lot of things that you have told us this morning that happened so long ago, isn't that right? A. I am answering the best of my knowledge at all times.

Mr. Todarelli: All right. That is all.

*C. B. Brown, for Gov't, Re-direct, Re-cross.*

RE-DIRECT EXAMINATION by Mr. Hilly:

655

Q. On October 1, 1941, Mrs. Blumberg, what was your understanding after your conversation—

Mr. Todarelli: I object to that, your Honor. I don't care what her understanding was.

The Court: If her understanding was gained from some conversation with somebody it is admissible.

Mr. Todarelli: Well, I do not object to that, sir.

Q. You had a conversation with Kay on October 1, 1941, at your home; is that correct? A. At my house, yes.

Q. And after that conversation, what was your understanding?

656

Mr. Todarelli: Now I object to that.

The Court: Objection overruled.

Mr. Todarelli: It calls for the operation of her mind. I think all she can say is what she said to Kay and what Kay said to her.

The Court: Objection overruled.

Q. Will you tell us what your understanding was at that time—

Mr. Hilly: May I have that exhibit, please.

657

Q. I am talking now with respect to the time— A. I understood that this man was going to live there, in fact, he said he was going to live there.

Mr. Hilly: I have no more questions.

RE-CROSS EXAMINATION by Mr. Todarelli:

Q. Do you remember that as you sit there on the stand today? A. Yes. He said he was going to live there.

Q. That is one of the things that you do remember then? A. They were going to have it as a hotel or something there.

*C. B. Brown, for Gov't, Re-cross.*

658

Q. And you do remember that, is that it? A. Yes, I remember.

Q. What was the place rented as from you? A. It has been rented as a hotel.

Q. What was it rented by Kay for Pauline Hillson as? Mr. Hilly: I object to the form of the question, if your Honor please.

The Court: If there was some conversation about it, she may answer.

Mr. Hilly: Yes; but I object to the use of rented by Kay for Pauline Hillson.

659

Mr. Todarelli: That is what the lease says, your Honor.

The Court: All right. Go ahead.

Q. What was it rented as? A. A rooming house, wasn't it? A. Yes, with the understanding that he was going to live there.

Q. With the understanding. You say that he told you that himself? A. Yes.

Q. You remember that? A. Yes.

Q. But there are a lot of other things you don't remember? A. That is right.

660

Q. That is one of the things that stand out in your mind? A. There is a few things that I remember. It has been a long time ago, and I didn't care about remembering some things.

Q. At the last trial you did not remember the \$25 that he had given you on October 1st, did you?

Mr. Hilly: Objected to, if your Honor please. There is no evidence here of that fact.

The Court: That is right. Objection sustained.

*C. E. Neville, for Gov't, Direct.*

Mr. Todarelli: There is evidence, your Honor, 661  
that on October 1st—

The Court: You may ask her the question.

Q. On October 1st, 1941, you had never heard the name Pauline Hillson, that is what you said at the last trial; I showed you a receipt this morning that you identified where the name Pauline Hillson is inserted by you; isn't that right, Mrs. Blumberg? A. That is what you have there.

Mr. Todarelli: All right. That is all.

Mr. Hilly: I have no further questions.

The Court: That is all.

(Witness excused.)

662

Mr. Hilly: Charles E. Neville.

CHARLES E. NEVILLE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Neville, what is your occupation, sir? A. I am a registered real estate broker.

Q. Where are you located? A. Miami, Florida.

663

Q. Were you a registered real estate broker in October, 1941? A. Yes, sir. Since 1920.

Q. Did you handle property at that time for a Mrs. Cora Blumberg? A. I did.

Q. Was one of the pieces of property known as the El Chico Hotel located at 66 Northwest Fifth Street in Miami, Florida? A. Correct. I sold it to her.

Q. Let me direct your attention to the date October 2, 1941, showing you Government's Exhibit 7 in evidence, and ask you if on that date you met Mrs. Blumberg? A. I did.

664

Q. After you met her did you meet anyone else? A. I met a man named Kay.

Q. Do you see him in court, Mr. Neville? A. Yes.

Q. Where do you see him, sir? A. Right over there (indicating).

Mr. Todarelli: We will concede that he identifies the defendant.

The Court: Very well.

Q. Now at that time, on October 2, 1941, was Government's Exhibit 7 executed? A. Yes, sir.

665

Q. And you signed as a witness to Mrs. Blumberg's signature? A. I did.

Q. And the name that appears on the bottom of that in the lower lefthand side of the page—I am in error; on the lower righthand side of the page, Pauline Hillson, per A. K., who signed that? A. Mr. Kay.

Q. Now at the time that signature was affixed to Government's Exhibit 7, was there any conversation that you or anyone else had with Mr. Kay? A. I asked him if he had power of attorney to use her name.

Q. And what was his reply? A. He said he had.

666

Q. Was any— A. I said, "Have you got it with you?" He said, "No, I left it in New York."

Q. Now after the execution of that lease did you visit the El Chico Hotel with Mrs. Blumberg? A. I got a call about two weeks afterwards, as far as I can recollect, that there was some furniture being moved out of the house that she had left there.

Q. Did you go over there? A. I met her there between 10 and 11 o'clock in the morning.

Q. And what happened at that time? A. Well, we went upstairs and talked to a couple of the girls that were



*C. E. Neville, for Gov't, Cross:*

There, asked about the stuff being moved out without her permission. I said, "Why didn't you notify her or telephone? If you didn't want the stuff she would move it out, but you shouldn't move it off the premises without notifying the owner."

667

Q. Was there anyone present besides the girls at that time? A. No. I asked for Mr. Kay and they said he wasn't around.

Q. That same day during your visit there did you see Mr. Kay? A. He came in shortly afterwards.

Q. I show you Government's Exhibit 1 in evidence and ask you if you have ever seen that picture or seen that woman as represented by that picture? A. Yes.

668

Q. When did you see her, Mr. Neville? A. 66 North-west Fifth Street.

Q. When did you see her? A. On the day that we visited there, perhaps about the 10th of October, 12th of October; somewhere around there.

Q. Was there more than one woman there at that time? A. There was two of them.

Q. Have you seen that other woman? A. Yes.

Q. When was the last time that you saw her? A. I saw her in the witness room this morning.

669

Mr. Hilly: If your Honor please, I have no further questions of this witness at this time.

CROSS EXAMINATION by Mr. Todarelli:

Q. Did you prepare that lease, Mr. Neville? A. That lease was drawn by a notary public.

Q. It was not prepared by you? A. Mrs. Adair. She was a notary. I had her draw it up.

Q. Now, when you testified that you asked Kay if he had a power of attorney, isn't it a fact that you ask every-

*W. L. Hames called for Government  
Motions.*

670

body who signs anybody else's name whether or not they have a power of attorney? A. Certainly. Any man who knows his business, knows real estate business, naturally would, because you can't put it on record unless you get something bona fide to show, the Court won't accept it.

Q. So Kay said— A. He had.

Q. You asked Kay if he had the right to sign her name?

A. Certainly.

Q. And he said he was renting this for Pauline Hillson, didn't he? A. That is right.

671

Mr. Todarelli: All right. That is all.

Mr. Hilly: No further questions.

The Court: That is all.

The Witness: Thank you, Judge.

Mr. Hilly: Walter L. Hames.

The Court: Mr. Neville, just a minute.

(Discussion off the record.)

(Witness excused.)

672

WALTER L. HAMES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Todarelli: May Mr. Hilly and I approach the bench, your Honor?

The Court: Yes.

(The following took place at the bench, out of the hearing of the jury):

The Court: Let your record show that this is at the bench.

Mr. Todarelli: I now move that all the papers taken by the F. B. I. at the apartment of Alvin Kay

*Motions.*

325 East 77th Street, be returned by the Government to the defendant, and that any evidence seized at that apartment be suppressed.

673

Mr. Hilly: If your Honor please, even with respect to the letter which your Honor has ordered suppressed, your Honor has not decided that ownership of that letter exists in the defendant Krulwich.

Now, with respect to certain other documents that are still in our possession, there is a conflict as to whether they actually belong to the defendant Kay or whether they actually belong to either Joyce Winston, or, as we know her, Joyce Sorrentino, or Rose Sookerman, who is better known as Pauline Hillson.

674

Mr. Todarelli: I am perfectly willing to have your Honor reserve decision on that part of the motion in which I ask that the Government be directed to return the papers to the defendant.

The Court: Well, I will order the Government to return to the defendant whatever concededly belongs to him. Other documents that were seized at the apartment may be impounded with the clerk of the Court.

675.

Mr. Todarelli: Yes. Will your Honor rule on the part of the motion which asks that all evidence be suppressed?

The Court: Yes. That motion is granted.

Mr. Todarelli: Now with that in the record, your Honor, I should like to call your Honor's attention to the fact that this witness is employed by the Red Top Cab and Baggage Company and that he identi-

*Motions:*

676

fied the baggage receipt with a certain date on it. That baggage receipt was seized from the apartment of the defendant on December 6th. We maintain that his testimony is improper, in that it is based upon evidence uncovered ~~as~~ the result of the use of that receipt and that it is a fruit of an illegal search and seizure on which your Honor has so ruled.

677

Mr. Hilly: If your Honor please, we of course maintain that this witness was brought into being by investigation by the Federal Bureau of Investigation without using or without the benefit of any such information that was seized at the apartment on December 6, 1941.

The Court: Do you want to assure me that the evidence which you are about to introduce is not the fruit of the illegal search?

Mr. Hilly: Yes, your Honor, I do wish to make such a statement to your Honor.

678

Mr. Todarelli: I hope Mr. Hilly knows what he is doing, because you read the record of the last trial and the first thing we show is the baggage receipt dated October 22nd, and that baggage receipt was taken from the apartment.

The Court: Off the record.

(Discussion off the Record.)

Mr. Hilly: I want to show your Honor what my statement is based on. This record that I am now laying before your Honor is the record of the first trial, which took place in July, 1943; and it is very significant to note in that record there is no testimony by anyone from the Red Top Cab and Baggage Company. It is also interesting to note that there

*W. L. Hames, for Gov't. Direct.*

no testimony in that record on the direct case of the Government by any people from the Pennsylvania Railroad Company. However, at that time the defendant Krulewitch testified in his own behalf and he offered certain baggage evaluation receipts which the Government maintained were forgeries and which the Government subsequently proved were forgeries, because the receipts were dated sometime in October, 1941, and the Government proved by an expert from the Pennsylvania Railroad Company that that paper on which that particular receipt was written was not used by the Pennsylvania Railroad Company until April of 1942.

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The Court: Well, it is not necessary to argue the matter—

Mr. Hilly: I just want—

The Court: Just a minute. (Continuing)—any longer. On your assurance that the testimony which you are about to introduce is not the fruit of the illegal search, I will receive the evidence.

DIRECT EXAMINATION by Mr. Hilly:

Q. Mr. Hames, in October of 1941 by whom were you employed? A. Red Top Bag & Baggage Company.

681

Q. And where were you employed? A. Miami, Florida.

Q. Now, let me direct your attention to this paper here and ask you if—

Mr. Todarelli: May I look at the paper?

The Court: I beg pardon?

Mr. Todarelli: May I look at the paper, your Honor?

The Court: Certainly.



*W. L. Hames, for Gov't, Direct.*

682

Mr. Hilly: I am sorry (handing to Mr. Todarelli).

Mr. Todarelli: Thank you.

Q. I ask you to look at this sheet of paper and ask you if you can tell me what that is? A. It is a baggage receipt from Red Top Baggage Company.

Q. And does that bear your signature? A. That is my name, but it is not my signature.

Q. It is not your signature? A. No.

Q. Now, on October 22, 1941 did you deliver any baggage to a hotel known as the El Chico Hotel? A. I did.

683

Q. And that hotel was located at 66 Northwest 5th Street, Miami, Florida, is that right? A. That is right.

Q. And looking at Government's Exhibit 3 in evidence, is that the El Chico Hotel? A. It is.

Q. And that is the place to which you delivered the baggage, is that correct? A. It is.

Q. And was anyone present at the time you delivered the baggage to the El Chico Hotel? A. There was one man and two ladies present.

684

Q. Now with respect to the two ladies that were present, have you seen one of those ladies recently? A. (No answer.)

Q. When was the last time you saw one of those ladies? A. It has been several months ago.

Q. Did you see her this morning? A. Yes, I believe I did. There was a lady out in the hall. I am sorry. I wasn't thinking about her.

Q. And looking at Government's Exhibit 1 in evidence, I ask you if you have ever seen the woman as represented in that picture before? A. It was similar to one of the women who was in the room at the time I delivered the baggage.

*W. L. Hames, for Gov't, Cross.*

Q. Now, you say there was a man present on October 22, 1941, is that correct, Mr. Hames? A. That is right. 685

Q. Will you look about the court and see if you see that man present in the courtroom? A. Yes, sitting at that table (indicating).

Mr. Hilly: Is the identification of the defendant Krulewitch conceded?

Mr. Todarelli: Oh yes.

Q. Now, about a week after October 22, 1941 were you present at the Florida East Coast Railroad Station? A. I was.

Q. And what did you see at that time? A. Well, the same man and two ladies that I delivered the baggage to was at the station. 686

Mr. Hilly: With your Honor's permission I would just like to have these papers marked for identification at this time.

(Marked Government's Exhibits 8-A, 8-B and 8-C for identification.)

Mr. Hilly: If your Honor pleases, I have no further questions of this witness at this time.

CROSS EXAMINATION by Mr. Todarelli:

Q. As you sit there on the stand, Mr. Hames, can you tell this jury that unless you have the help of some papers you could remember that the particular date upon which you saw the defendant and those two ladies was October 22, 1941? A. No, I couldn't swear to the exact date. 687

Q. No? A. I know it was several days after I delivered the baggage.

Q. Pardon me? A. It was several days after I delivered the baggage. I don't remember the exact date.

Q. I am talking about the first time. A. No.

*W. L. Hanes, for Gov't. Cross.*

688 Q. You testified on direct examination that on October 22, 1941 you saw this defendant and two ladies at the railroad station, is that right?

Mr. Hilly: No, that is not the testimony.

Q. Where? Where did you see them? A. It was several days after I delivered the baggage I saw them at the Florida East Coast Railroad Station.

Q. Didn't you testify, or am I wrong, that you saw these people twice? A. That is right.

Q. Now, the one time was several days after you delivered the baggage, and is that the second time? A. That  
689 is right.

Q. I want to know about the first time. Do you remember the date that you saw them? A. Not the exact date without seeing—

Q. Without seeing some papers you don't remember the exact date, do you? A. No, I don't.

Q. All right. The fact of the matter is that one of these papers that was marked for identification and shown to you by Mr. Hilly was not even in your handwriting, was it? A. No, there never was in my handwriting.

Q. Then without the help of anything else you cannot  
690 testify that it was October 22 that you saw this defendant?

A. With the exception of the date on the paper, yes.

Q. I say, without that paper you could not so testify?

The Court: That is what he says, Mr. Todarelli.

Mr. Todarelli: All right.

Q. It might have been the 24th or it might have been November 1st?

Mr. Hilly: Oh, no. Objected to, if your Honor please.

Mr. Todarelli: I withdraw the question.

*W. L. Hames, for Gov't Cross.*

Q. Can you give us the name of one person that you saw on that day? A. Only the name that is signed on the paper. 691

Q. No, of one person outside of these people. Can you name one person you saw on that date outside of these people? A. I don't know the names of any of them.

Q. You don't know the names of any of them? A. No.

Q. By the way, what is your job? A. I am a painter at the present time.

Q. A painter? A. That is correct.

Q. And what were you doing in October of 1941? A. I was working for Red Top Baggage Company delivering baggage. 692

Q. How? Automobile? A. Truck.

Q. By truck? A. That is right.

Q. And how long had you been doing that? A. Since the latter part of 1940.

Q. And I suppose that you delivered many pieces of baggage, didn't you, in 1940— A. That is right.

Q. —in 1941? A. That is right.

Q. And you saw a lot of people whose baggage you were delivering? A. I certainly did.

Q. Running into the hundreds? A. Several of them. 693

Q. Do you remember testifying before, Mr. Hames, before in this court? Do you remember testifying in this court? A. I do.

Q. Before Judge Porterie? Does that name mean anything to you? A. I don't remember the name, no.

Q. At any rate, you did testify on one previous trial? A. I did.

Q. Now, before you testified did you talk to some agents of the Federal Bureau of Investigation? A. When I was

*W. L. Humes, for Gov't, Re-direct.*

694 summoned the first time I was summoned by the Federal Bureau of Investigation.

Q. They talked with you about the case before you actually came to New York? A. They showed me pictures and asked me if I could identify the pictures.

Q. They showed you pictures? A. Yes.

Q. And did you pick out this man here from a picture? A. A man and one of the ladies, yes, sir.

Q. Beg pardon? A. The man and one of the ladies, yes.

Q. You picked them out after they showed you their pictures, is that right? A. That is right.

695 Q. Did they show you any other pictures, or just the man and the two ladies? A. Just the man and the two ladies.

Q. No other pictures? A. I don't remember. I think it was just the man and the two ladies. I don't remember positively.

Mr. Todarelli: All right.

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Mr. Humes, looking at—

696 Mr. Todarelli: May I ask one question? Stay right there, Mr. Hilly.

By Mr. Todarelli:

Q. And they told you that the man's name was Alvin Kay when they showed you his picture, didn't they, or Krulewitch? Alvin Kay or Alvin Krulewitch, didn't they tell you that? A. I don't remember what they told me his name was.

Mr. Todarelli: All right.



*C. V. McNeil, for Gov't, Direct.*

By Mr. Hilly:

697

Q. Looking at Government's Exhibit 8-C marked for identification, in the lower righthand side of that paper, or in the lower lefthand side of the paper as you view it, is a signature, is that correct? A. That is right.

Q. And who put that signature on? A. The man that delivered the baggage to.

Q. The man that you delivered the baggage to? A. That is right.

Mr. Hilly: I have no further questions.

Mr. Todarelli: Let me see it, will you?

Mr. Hilly: Yes, surely (handing to Mr. Todarelli). 698

Mr. Todarelli: That is all.

Mr. Hilly: Thank you. No further questions, Mr. Hames.

(Witness excused.)

CURTIS V. McNEIL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Todarelli: Will your Honor direct the last witness to remain here for a moment, because frankly I did not understand the question asked by Mr. Hilly and I want the reporter to read it. 699

The Court: All right. Tell Mr. Hames not to leave the court house.

Direct Examination by Mr. Hilly:

Q. Mr. McNeil, what is your occupation, sir? A. In the baggage transfer.

Q. And by whom are you employed? A. Red Top Cab Company.

*C. V. McNeil, for Gov't, Direct.*

700 Q. Red Top what, sir? A. Cab Company.

Q. And where are they located? A. In Miami.

Q. Now, were you so employed in October of 1941? A.  
Yes, sir.

Q. Will you look at Government's Exhibits 8-A, B and C for identification, and I ask you if they are records of the Red Top Bag & Baggage Company? A. Yes.

Q. And are they records kept in the regular course of business? A. That is right, yes, sir.

Q. And is it part of the regular course of the business of the Red Top Bag & Baggage Company to keep such records? A. That is right.

Mr. Hilly: I now offer these records in evidence.

Mr. Todarelli: I object to them on the first ground that they are immaterial and incompetent; and on the second ground on the same grounds that I urged and made at the bench before your Honor just as the witness Hames was called.

The Court: Are you finished?

Mr. Todarelli: Yes, your Honor.

The Court: They may be received.

(Government's Exhibits 8-A, 8-B and 8-C for identification received in evidence.)

702 Mr. Hilly: I have no further question of this witness.

(Witness excused.)

Mr. Hilly: Do you now want to recall Mr. Hames?

Mr. Pinto: Can we recess for a minute or two?

The Court: Yes, we will take a short recess.

(Short recess.)

W. L. Hames, re-called for Gov't, Direct.

A. S. Peacock, for Gov't, Direct.

703

WALTER L. HAMES, re-called.

Mr. Todarelli: I have no questions, your Honor. I just wanted to make sure that I did not have any.

The Court: All right. That is all, Mr. Hames.

The Witness: Thank you.

(Witness excused.)

Mr. Hilly: Arthur S. Peacock.

While we are waiting for this witness, with your Honor's permission I would just like to direct the jury's attention to Government's Exhibits 8-A, B and C in evidence.

704

The Court: You may.

(Mr. Hilly reads Government's Exhibits 8-A, 8-B and 8-C to the Court and jury.)

Mr. Hilly: Now, if any members of the jury want to look at it.

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ARTHUR S. PEACOCK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

705

Q. Mr. Peacock, where do you live? A. I am living in Ocala and Miami at present.

Q. And in October and November of 1941 were you in business? A. I was.

Q. And where were you in business? A. 72 Northwest 5th Street, Miami, Florida.

Q. What business were you in? A. I was in the retail bicycle business.

*A. S. Peacock, for Gov't. Direct.*

706

Q. Now looking at Government's Exhibit 3 for identification, can you tell me what that is? A. This is a picture that I had taken myself of the building in which my business occupied the lower floor.

Q. Now let me direct your attention to the date October 1, 1941. On that day did anyone come into your bicycle store and have a conversation with you with respect to the El Chico Hotel? A. It has been quite some time ago, but to the best of my recollection those dates are correct. A man came into my place and asked me if he could rent the upstairs.

707

Q. Now, do you see that man in court? A. Yes. Sitting second over there.

Mr. Hilly: The identification is conceded.

Q. Did you have a conversation with that man? A. I did.

Q. Was there anyone else present at that time? A. There was a gentleman with him who I have not seen since. I don't know whether he was with the gentleman or not, but he came in the store at the same time and left at the same time.

708

Q. Will you tell us the conversation that you had at that time with this man? A. In my own words, this man came into the store and as I had been leasing the complete building he wanted to know if he could lease the upstairs. I told him that recently the building had been sold and that I didn't have anything to do with the upstairs at that time, and told him where he could find the owner of the building who might lease it to him.

Q. Was there any further conversation that you had with him at this time? A. It has been quite some time ago.

*A. S. Peacock, for Gov't, Direct.*

but it is to the best of my recollection; I was trying to find out what was going in upstairs. 709

Mr. Todarelli: I object to that, your Honor.

Q. You mean you were asking him questions? A. Yes.

Q. And he made answers to those questions, is that right?

The Court: Just in your own words.

A. He made some sort of an answer; it has been so long ago that I can't remember exactly what it was. Seemingly there was something said that he led me to believe that they weren't going to sell merchandise or something upstairs, they were going to operate. 710

Q. And after your conversation with this man did you have any understanding as to what—from your conversations with him did you have any understanding as to what the place was going to be used as?

Mr. Todarelli: I object to this, your Honor, on the ground that it calls for a conclusion of the witness and an operation of his mind.

The Court: No, it does not. It asks for his understanding as the result of a conversation. He may answer.

The Witness: May I answer the question? 711

A. In accordance to my belief at that time the gentleman led me to believe that there was going to be the same as had been operated there sometime before a house of prostitution.

Mr. Todarelli: I now respectfully ask for a mistrial. The evidence was highly incompetent. In the first place I maintain—

The Court: I can't hear you, Mr. Todarelli.



*A. S. Peacock, for Gov't, Direct.*

712

Mr. Todarelli: I respectfully move for a mistrial on the ground that prejudicial error has crept into the record and that the witness was permitted to give his understanding without having given what the actual testimony was; he is giving now an operation of his own mind, where he says as a result of the conversation, I understood so. I maintain that people can get misimpressions very frequently, and very frequently do. You and I may have a conversation, your Honor, and I may gather one inference from what is said and someone else might gather another inference.

713

Ordinarily I would concede that this testimony might not hurt, but I never anticipated that anything like this would be said. I think it is highly prejudicial and detrimental to the best interests of the defendant and I respectfully urge the withdrawal of a juror.

The Court: Mr. Peacock, let me ask you a question.

714

Was this understanding which you have just expressed as a result of something which the gentleman said to you?

The Witness: Yes, it was. I can't recall just exactly what was said. Had I been asked that same question—

Mr. Todarelli: I object to that—had I been asked the same question. I don't know what he is going to say, but obviously—

The Court: Objection overruled. Go ahead, answer the question.

The Witness: Had I been asked that same ques-

*A. S. Peacock, for Gov't, Direct.*

tion in the first trial, that we had, I would have very likely been able to answer it. 715

Mr. Todarelli: I object to this.

The Court: Your objection is overruled.

The Witness: The exact words. But it has been some time ago, and I just can't recall the exact words.

The Court: Motion for mistrial is denied.

Q. Now, this conversation, incidentally, occurred with this man here that you have identified; is that correct?

A. That is correct. Known to me as Mr. Kay.

Q. Now, did you see Mr. Kay again from time to time? 716

A. He went away some time after that, and then it was some time later that I seen him return, or he had returned and I seen him on the premises.

Q. And at the time you saw him on the premises was there anyone else with him? A. Yes. I have seen him with two other ladies.

Q. Have you seen one of the other ladies recently? A. Yes.

Q. Where did you see her last? A. In the witness room.

Q. I show you a picture of Government's Exhibit 1 in evidence and ask you if this is a picture of the other woman? 717

A. Yes, it is.

Mr. Hilly: Identifying the picture of Rose Soorkerman.

Q. Now with respect to the El Chico Hotel, did Kay and these women use that place? A. They did. They occupied the upper floor.

Q. Did you see Kay there continuously during the—

*A. S. Peacock, for Gov't, Cross.*

718 A. No, he wasn't there continuously. He evidently went away and came back.

Q. Now with respect to the El Chico Hotel, how was entrance gained to it? A. They had an entrance on Fifth Street, which was known as 66 Northwest Fifth Street, and in the rear of the building there was an entrance that came right down by my door where my work bench was, right by my rear door.

Q. And did you have occasion to see who went up or came down from 66 Northwest Fifth Street? A. Not from 66, because that was from the front of my business which I wasn't very often in the front; but from the rear entrance, yes.

Q. And did you see people coming down and going up that rear entrance while these two women were at the premises? A. I did.

Q. Whom did you see going up and down? A. Well, I didn't know the people, they were mostly men, most all that went up there were men.

Mr. Hilly: If your Honor please, at this time the Government has no further questions of this witness.

720 You may inquire, Mr. Todarelli.

CROSS EXAMINATION by Mr. Todarelli:

Q. Mr. Peacock, you testified at the trial before Judge Porterie, didn't you? A. I do not know the judge's name. I have testified in the case before.

Q. And when did you arrive in New York City for this trial? A. This morning. Wait a minute. Yesterday. And then, I arrived for this trial last Monday.

Q. You have been here all week, in other words? A. No, I have been out and then back again.

*A. S. Peacock, for Gov't, Cross.*

Q. You arrived here Monday? A. That is right.

721

Q. And when did you see Mr. Hilly? A. Monday morning.

Q. When did you see the agents of the Federal Bureau of Investigation? A. The same time as I seen Mr. Hilly. I suppose they were agents in there; there were gentlemen in there.

Q. Did you discuss the case with Mr. Hilly or with the agents? A. Mr. Hilly asked me to look over the evidence which I had given.

Q. He asked you to look over this testimony here, did he not, Mr. Peacock, and I direct your attention to folios 479 and 490 inclusive—491 inclusive. A. (Witness refers.) You say 489 inclusive?

722

Q. 491. A. 491.

Q. Is that right? A. Yes, sir.

Q. How many times did you read it? A. Just slightly over.

Q. How many times did you read it? A. Once.

Q. And didn't somebody say to you, "Now, Mr. Peacock, you didn't say anything at the last trial about a house of prostitution and if you are asked this time say 'That had I been asked at the last trial I would have so testified,'" isn't that right? A. Make that statement again, please, sir.

723

Mr. Todarelli: Read it to him, Mr. Reporter.

(Question read.)

A. That is correct.

Q. Who told you that? A. Told me what?

Q. Who told you? Who told you to say that "Had I been asked at the last trial I wouldn't have made that answer"? A. Nobody told me to say that.

*A. S. Peacock, for Gov't, Cross.*

724 Q. You just said, "That is correct." A. Nobody told me to say it. I did say it. Nobody told me to say it.

Mr. Todarelli: Read the question again that you re-read a moment ago. If your Honor please, may we have it read once more?

The Court: Yes.

Q. Listen to the question.

(Question re-read.)

Q. And the answer is "That is correct"?

The Court: Do you understand the question, Mr. Peacock?

725 The Witness: No, I do not, your Honor.

The Court: All right.

Q. Didn't somebody call your attention to the fact that in the last trial you said nothing whatever about a house of prostitution? A. Yes.

Q. Who did that? A. Mr. Hilly.

Q. Did any agent of the Government point that out to you also? A. No.

Q. Anybody else? A. Just Mr. Hilly.

726 Q. Did Mr. Hilly say to you, "Now, if you are asked that question, why you didn't mention it at the last trial, you tell the Court and jury that had you been asked that question you would have said the same thing that you are saying in court this morning"; isn't that right? A. Mr. Hilly asked me why I didn't mention that, and I told him I was not asked the reason I did not mention it.

Q. Weren't you asked at the last trial to give all the conversation you had with Krulewitch? A. No, sir.

Q. Let's see. A. I was not.

Mr. Todarelli: With your Honor's permission I should like to read all of this testimony of this wit-



A. S. Peacock, for Gov't, Cross.

ness, it is not too long, I assure you, and question him as I go along.

727

Q. "Mr. Peacock, you will have to keep your voice up so that the last juror can hear you."

Mr. Hilly: Mr. Todarelli, will you indicate to the reporter what page you are reading from.

Mr. Todarelli: Reading from page 160.

Q. "Direct Examination by Mr. Wallace:"

Q. Mr. Peacock, you will have to keep your voice up so that the last juror can hear you. Where do you live?

A. I live in Miami, Florida.

Q. What business are you in? A. I am in the bicycle business.

728

Q. Where is your store located? A. Located 70 and 72 Northwest Fifth Street.

"Mr. Wolf:" says, "I have no objection."—

Mr. Todarelli: Mr. Wolf was the attorney for one of the defendants, your Honor.

Q. (Continuing) "I have no objection to your leading the witness," said Mr. Wolf.

Q. In the same building as the El Chico Hotel? A. The upper store is the El Chico Hotel and the lower store is my business.

729

Q. On October 1, 1941, did a man come into your store inquiring about the rental of the El Chico Hotel? A. Yes, sir, he did.

Q. Do you see him in the courtroom? A. Yes, the man sitting second from this end (indicating)."

And Mr. Wallace says, "Indicating the defendant Krulwich."

"Listen carefully, Mr. Witness:

Q. Did you have a conversation with him? A. Yes, sir, we had a small conversation.

*A. S. Peacock, for Gov't, Cross.*

730 "Q. What was said? A. The gentleman asked me if I could give him any information with regard to the building, and if I had the renting of it. I told him I did not have anything to do with the building, but I could tell him who did have. I gave him Mrs. Cora Blumberg's address, who was the owner of the building at the time. He thanked me and left the store."

Isn't that all the conversation that you had with him?

A. No. There were other words passed.

Q. Didn't you testify; weren't you asked those questions I just read and didn't you give the answers that I just read?

731 A. Yes, sir.

Q. And they were true at the time, weren't they? A. They are still true.

Q. "Q. Did you see him again? A. Yes, several days after that.

"Q. How long after the first occasion did you next see him? A. I seen him on the following day, and then a couple of days following that, and then it was approximately two to three weeks, I would not be certain on it, before I saw him again.

732 "Q. The first time you saw him was around October 1st? A. Yes, sir.

"Q. And then you saw him the following day and then you saw him two or three weeks later? A. Yes, sir.

"Q. When you saw him two or three weeks later, was he alone? A. No. I then seen him in the company of another lady, who apparently lived upstairs. And then I seen him alone in the same period of time.

"Q. Do you see the other woman in the courtroom? A. I see the other lady there. She is the last one, sitting on the end there (indicating)."

*A. S. Peacock, for Gov't, Cross.*

And "Identifying the defendant Rose Sookerman." 733

Mr. Hilly: That is Mr. Wallace, is that right?

Mr. Todarelli: Well, yes. Mr. Wallace identifies the defendant; says, "Identifying the defendant Rose Sookerman."

Q. "Q. Will you look at Government's Exhibit 2 and tell me if you recognize the person in that picture? A. Yes, that is one of the girls who lived upstairs or apparently occupied some room upstairs.

"Q. Did you see the defendants Krulewitch and Sookerman, the two people that you have just identified, using the upper portion of the premises while this girl was there? A. Yes, sir. 734

"Q. How long did they live there? A. A period of around, a little better than two months, perhaps to the third month.

"Q. Was the defendant Krulewitch there all during the two months' period? A. Is this Krulewitch here (indicating)?" And Mr. Wolf says "Yes."

"A. (Continuing) No, sir, he was not. He was around several times, but he did not seem to stay there permanently. 735

"Q. Did any other people visit the upper rooms? A. Oh, yes, there were quite a few transient traffic that was upstairs.

"Q. Men or women, who were they? A. Very often men. They used the rear stairs which comes by my back door where I do a lot of business in my bicycle business.

"Q. Did you see this girl whose picture you just looked at, and the defendant Sookerman in the street outside the hotel? A. No, I have often seen the lady sitting on the

*A. S. Peacock, for Gov't, Cross.*

736 end with this girl. One of them, I think, had a dog. They used to take the dog out. They used to go out by my rear door. I seen them together quite a bit.

"Q. Where would they be? A. I have seen them at an eating place. Practically all the people in the vicinity ate at a little restaurant below there.

"Mr. Wallace: Mark this for identification.

"(Marked Government's Exhibit 6 for identification.)

737 "Q. I show you Government's Exhibit 6 which has been marked for identification. Tell me if you recognize the building there? A. Yes, sir, that is the El Chico Hotel on the top floor, and the Peacock Bicycle Shop on the lower floor.

"Q. Did you take this picture? A. Yes.

"Q. How long ago did you take it? A. That picture was taken approximately two years ago.

"Q. What was the condition of these premises in October, November and December, 1941? Was it as represented in this picture? A. There has been no material alteration in the building since I have been there, 17 years.

738 "Mr. Wallace: I offer Government's Exhibit 6 for identification in evidence. I take it that there is no objection.

"(Government's Exhibit 6 for identification received in evidence.)

"Q. Will you show me on this picture now one would get to the upper premises from the street? A. In this picture here there is a stairway right at my rear door, which leads up and comes into a hallway. It runs with the building this way and there is a stairway here in the front (indicating). This stairway here is used perhaps more

*A. S. Peacock, for Gov't, Cross.*

than the front stairway. I do not know why. A great number of men who go to the top of this building go up this stairway (indicating).

739

"Q. Is that what you call the rear stairway? A. That is the rear stairway.

"Q. Did you ever see this girl, Elizabeth Sorrentino, Elizabeth Wilson, whose picture is shown in Government's Exhibit 2, and the defendant Sookerman, sitting outside these premises? A. Yes, sir, that is the lady on the end? Is her name Pauline Hillson? Is that Sookerman?

"Q. That is correct? A. Yes, I have.

"Q. Where were they sitting? A. Right along in here, standing right along in this hallway here (indicating). They would often times have conversation with people who would be coming up, transient people coming up and down the street.

740

"Q. What kind of people? A. Mostly men.

"Mr. Wallace: No further questions.

"Mr. Wolf: No questions."

Were you asked those questions and did you give those answers? A. As read in that book?

Q. Yes. A. I did.

Q. You also testified at the first trial here, didn't you, which took place a month before the second trial? A. It is my recollection I only testified once.

741

Q. Didn't you testify twice in this case before this morning? A. I don't remember.

Q. But you do remember a conversation that took place six years ago, and you don't remember that you testified in July, 1943, and in August, 1943, is that right? A. Yes, I do have a recollection of testifying twice. I have been up here about six times on this same trial.



*A. S. Peacock, for Gov't. Cross.*

742 Q. How many times have you testified in court in your life? If that is about three times. This would make the third time.

Q. In other words, outside of this case you have never testified in court, am I right? A. Would that take in police courts and various different things of that kind?

Q. Any court. A. I wouldn't know exactly how many times, because I have testified in police courts where there has been accidents and such as that.

Q. How many times have you testified in the federal courts outside of this case? A. Never.

743 Q. Why did you have trouble then in recalling that you testified twice before today in this case in the federal court? Because that has been quite some number of years ago.

Q. That was in July, 1943? A. And since then there has been so much water passed over the dam, it would be an impossibility for any one man to remember those details—

Q. When did you see the defendant— A. —without thinking it over.

Q. —the first time in your life? When did you see the defendant the first time in your life? A. When he came in my place.

744 Q. When was that? A. I don't know. I wouldn't remember those exact dates unless the record was put down, unless it was made a record of.

Q. Did you make a record of it any place? A. No.

Q. When was the time? A. I didn't make a record of it. I wouldn't remember.

Q. Do you remember the year? A. I wouldn't even try to remember the year.

*A. S. Peacock, for Gov't. Cross.*

Q. Do you remember the month? A. I wouldn't even 745  
try to remember the month.

Q. Do you remember the season of the year? A. Cer-  
tainly it was in the winter.

Q. It was in the winter? When does the wintertime  
start? A. Nobody knows that, do they?

Q. Is that your best answer, that nobody knows when  
winter starts? A. Why, of course starts down there in  
December.

Q. Is that when you saw the defendant in December?  
A. No, later on.

Q. Later on? A. Uh huh. 746

Q. January? A. I wouldn't remember the exact  
month, sir.

Q. February? How many months are there in the win-  
ter? A. I wouldn't know how many months there are  
in the winter.

Q. How many months are there in the Florida winter?  
A. Your Honor, I don't have to answer these questions,  
do I?

The Court: If you do not know you do not have  
to answer them.

The Witness: I don't know. 747

Q. Well, when you said it was winter down there what  
do you mean? A. When the weather is cold.

Q. And then, in other words, you saw him some time  
in the cool weather for the first time, is that right? A. I  
wouldn't remember exactly whether it was true or not the  
time I met him.

Q. Do you remember testifying in this case in July of  
1943 before Judge Clancy? A. Yes, I do remember that  
there was a judge in that trial by that name.

*A. S. Peacock, for Gov't, Cross.*

748 Q. Were you asked these questions and did you give these answers:

Mr. Hilly: What page are you reading from, Mr. Todarelli?

Mr. Todarelli: - On page 141.

Q. You are Arthur S. Peacock, are you not? A. I was christened by that name, sir.

Q. "Q. Will you tell us the circumstances under which you became aware the hotel had been rented? A. A gentleman came into my store and asked me who had charge of the building and where he can see the party to rent it from. 749 I told him who owned the building and instructed him how to get there, and he left my place and the following day he returned.

"Q. Did he give his name? A. He did not.

"Q. Do you see him in the courtroom? A. Yes, sir.

"Q. Will you point him out? A. The gentleman sitting in the center there.

"Q. Do you remember the date you first saw him? A. It was either the very latter part of September or the first part of October"—

Mr. Hilly: "or the first of October."

750 Q. "or the first of October. I was working on my weekly report on the morning he came in that last week in September, or it might have been the first part of October."

Were you asked those questions and did you give those answers? A. I did.

Q. Did you read the testimony in this case before you took the stand today in the case before Judge Clancy? A. Today? No, I didn't read the testimony in this case today before I testified.

*A. S. Peacock, for Gov't, Cross.*

Q. Let me rephrase my question. Before you took the stand today you read the testimony that I showed you a little while ago? A. Yes. 751

Q. You read it a little while ago, did you not? A. I was on the stand at that time. It was not before I took the stand. I was on the stand at that time, sir.

The Court: Well, let us get the answer to the question. The question was before you took the stand did you read the testimony in that book that Mr. Todarelli now has in his hands?

The Witness: I read it right here, but that was after I took the stand, not before I took the stand. 752

Q. Let us get this straight, Mr. Peacock: Do you remember that I asked you if before today you had read the testimony that I showed you from the trial before Judge Porterie, including folios 479 to 491? Do you remember I asked you that? A. Did I read it before today?

Q. Yes. A. No; you asked me before I took the stand today. I didn't read it today. I read it several days ago and then here this morning.

Q. You did read it several days ago? A. That is right.

Q. All right. Did you read several days ago—

The Court: We will recess now until 2:15. 753

(Recess to 2:15 p. m.)

Afternoon session.

ARTHUR S. PEACOCK resumed the stand:

Cross Examination continued by Mr. Todarelli:

Q. Mr. Peacock, where did you have lunch today? A. At Garuso's, across the way.

*A. S. Peacock, for Gov't, Cross*

754 Q. Before you had lunch did you talk to anybody in the building here? A. Make that question more specific. Now, what do you mean? I talked to quite a few people.

Q. That is what I ask. Did you talk to anybody? A. That is right.

Q. With whom did you talk? A. Oh, before I had lunch I talked to Mr. Hannan, Mr. Davenport, Mr. Hilly, and I spoke to the F. B. I. boy, the man is there.

Q. Do you know who they were, by the way, the F. B. I.? A. I think his name is Hargrove or Harmon.

Q. Would it be Mr. Hoaglund here? A. Hoaglund, 755 that is right.

Q. Did you talk to any other agents of the Federal Bureau of Investigation? A. No, sir, not that I know of.

Q. With whom did you go to lunch? A. I ate lunch over in Caruso's. Mr. Hannan, Mr. Davenport had lunch over there, and also the other witness.

Q. Do you mean the girl? A. Yes.

Q. Mrs. Sorrentino? A. I know her as Kay. I don't know her as—

Mr. Todarelli: Well, can we agree, Mr. Hilly, that what he means is—

756 Mr. Hilly: We certainly can agree, Mr. Todarelli.

Mr. Todarelli: —is Sorrentino?

Mr. Hilly: Yes, we can.

Q. Mrs. Sorrentino was one of the parties who was at lunch with you? A. That is right.

Q. And when you came back with whom did you talk? Did you come back—withdraw— A. I spoke to Mr. Hilly and Mr. Hargrove.

Q. Mr. Hoaglund, you mean? A. Mr. Hoaglund, yes, sir.



*A. S. Peacock, for Gov't, Cross.*

Q. Did you discuss the case with them? A. No, sir. 757

Q. Did you discuss the case before you went out to lunch? A. No, sir.

Q. Didn't discuss the case at all? A. No, sir.

Q. What did they say to you and what did you say to them? A. Mr. Hilly told me to be back here at 2:15 and Mr. Hargrove told me I would go on the stand, right back on the stand. There wasn't anything of importance discussed.

Q. Has your recollection been refreshed now that you did testify twice before today? A. That is correct, yes, sir. 758

Q. At the trial before Judge Clancy, and I am reading from page 141, were you asked these questions and did you give these answers:

"Mr. Peacock, you live in Miami, Florida? A. I do.

"Q. You run a bicycle shop down there? A. Yes, sir."

Mr. Hilly: Just a minute, please, Mr. Todarelli.

If your Honor please, I object to the reading of this testimony. There is nothing there that contradicts this witness. This is just a complete reading of the testimony at the previous trials.

The Court: Is that what you plan to do, Mr. Todarelli? 759

Mr. Todarelli: There are three pages.

The Court: What is that?

Mr. Todarelli: There are three of these pages, that is all.

The Court: Is there anything in there that contradicts anything that the witness has said?

Mr. Todarelli: No, sir. May I state my purpose?

The Court: Yes.

*A. S. Peacock, for Gov't, Cross.*

760

Mr. Todarelli: My purpose is to show that at the trial before Judge Clancy he did not say anything about this being operated as a house of prostitution.

The Court: Well, ask him. Ask him if he did.

Mr. Todarelli: All right, I will ask him.

Q. Did you say anything— A. I was not asked, sir.

Q. Sir—

The Court: The question is, Mr. Witness, in your previous testimony did you at any time testify, as you have today, in reference to it being a house of prostitution?

761

The Witness: I did not.

Q. Were you asked at either of the two previous trials to give the conversation that you had with Krulewitch? A. That I wouldn't remember. This has been too long ago for me to make a positive statement of that.

Q. Were you asked this question? Perhaps this will refresh your recollection:

“Q. Will you tell us the circumstances under which you became aware the hotel had been rented?”

Mr. Hilly: Objected to as having been answered and gone over this morning, if your Honor pleases.

762

Mr. Todarelli: Following your Honor's suggestion.

The Court: He may ask the question.

Q. And your answer: “A gentleman came into my store and asked me who had charge of the building and where he can see the party to rent it from. I told him who owned the building and instructed him how to get there, and he left my place and the following day he returned.”

Do you remember that question being asked and did you give that answer? A. I have a recollection of that. I believe it is correct to the best of my belief at this time.

*A. S. Peacock, for Gov't, Cross.*

Q. And you gave to the best of your belief and to the best of your recollection what the conversation was that you had with the defendant here, is that right? A. In so far as I was asked. 763

Q. In so far as you remember, isn't that right? Is that right? A. As I was asked to give.

Q. Now, if you were asked to give the entire conversation you did give the entire conversation as you remembered it, isn't that right? A. I would have to bring that back again and say as I was asked. In other words—

Q. Now, at the second trial you were asked these questions: 764

Mr. Todarelli: Page 161.

Q. "Q. Did you have a conversation with him? A. Yes; sir, we had a small conversation.

"Q. What was said?"

Now, Mr. Witness, isn't it a fact that when you were asked that question, "What was said", that you told the Court and jury everything that you remembered being said as you remembered it then on the witness stand? Isn't that so? A. No, I wouldn't make that statement as to be a fact that I told the Court everything that was said. I remember answering what questions were asked me more specifically at that time. 765

Q. And the question asked was, "What was said"? Did you understand that? A. Yes.

Q. And you gave an answer, and didn't you give everything that you remembered being said between you and Kay? A. No, I wouldn't say that I did give everything.

Q. You mean to tell me that you omitted from your answer something that Kay had told you or that you had told Kay? A. In the course of the conversation—

*A. S. Peacock, for Gov't. Re-direct.*

766 Q. Just answer my question. Did you omit anything then, or did you intend to omit anything then? A. No, sir, I didn't.

Q. You didn't? A. No, I didn't intend.

Q. You intended, Mr. Peacock, to give the entire conversation that ensued between you and Kay? A. As it appeared to me at that time.

Q. As it appeared to you. That is precisely my point. As you remembered it at that time you gave everything that was said, is that right? A. That is right.

Mr. Todarelli: All right. That is all.

767

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Mr. Peacock, this testimony that you have given here today that you didn't testify to in the previous trial, at any time when I spoke with you since your arrival here in New York did I suggest that you give that testimony? A. No, sir.

Mr. Todarelli: I object to this, your Honor.

The Court: Oh, that is perfectly proper in view of some of the questions that you asked, Mr. Todarelli.

768

Mr. Todarelli: All right.

Q. Did any special agent of the Federal Bureau of Investigation make any suggestion to you with respect to that testimony? A. They did not, sir.

Q. Did anyone in the U. S. Attorney's office for the Southern District of New York, including myself, make any suggestion to you with respect to that testimony? A. They did not.

Q. Did anyone in Miami, Florida, any special agent in Miami, Florida, make any suggestion to you with respect

*A. S. Peacock, for Gov't, Re-cross.*

to that testimony, the testimony you have given here? A. 769  
They did not.

Q. Did anyone connected with the Government, or did anyone anywhere make any suggestion to you with respect to the testimony you gave here this morning? A. They did not.

Mr. Hilly: I have no further questions of this witness.

The Court: Anything further, Mr. Todarelli?

RE-CROSS EXAMINATION by Mr. Todarelli:

Q. Mr. Peacock, do you remember when you testified before Judge Porterie? Do you remember the year? A. No, 770  
sir, I don't.

Q. Do you remember that it was in August, 1943?

Mr. Hilly: If your Honor pleases, I don't like to object on this, but I do not think that is proper re-cross examination, sir.

The Court: No, it is not, but in my discretion I will permit it.

Mr. Hilly: Very well, sir.

The Witness: State your question again, please.

Q. Do you remember that it was in August, 1943? A. 771  
No, sir. It has been so long ago and there has been so much happened that I wouldn't remember the dates nor the time.

Q. Do you know that August, 1943, is about a year and a half after October, 1941, or about a year and nine months?

A. Yes, it would be approximately.

Mr. Todarelli: All right.

Mr. Hilly: I have no further questions. Thank you.

The Court: That is all, Mr. Peacock.

(Witness excused.)

Mr. Hilly: Mr. Edwin Hannan.



*A. E. Hannan, for Gov't, Direct.*

772

ALVAN EDWIN HANNAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Hannan, what is your occupation, sir? A. I am manager of the telephone company at Miami.

Q. And that is the Southern Bell Telephone Company?

A. Yes, sir.

Q. Will you look at that card, and will you tell me what that is? A. This is what we call the service application card for telephone service.

773

Q. And is this a record kept by the Southern Bell Telephone Company in the regular course of business? A. Yes, sir.

Q. And is part of the regular course of the business of the Southern Bell Telephone Company to keep this record?

A. Yes, sir.

Mr. Hilly: I will offer it in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It may be received and marked as an exhibit in evidence.

774

(Marked Government's Exhibit 9.)

Q. Now, Government's Exhibit 9 in evidence is an application, is it not, for a telephone to be installed at 66 Northwest 5th Street, Miami? A. Yes, sir.

Q. Does that show whether the application to have that telephone installed was made in writing or was it made in some other fashion? A. It shows, sir, that it was made by telephone.

Q. In other words, someone called in? A. Yes, sir.

*A. E. Hannan, for Gov't, Direct.*

Q. And was there a telephone installed at 66 Northwest 776  
5th Street, Miami? A. Yes, sir.

Q. And was the number listed or unlisted? A. Non-  
published.

Q. And in whose name was the telephone installed? A.  
Pauline Hillson.

Q. Now, will you look at these sheets of paper here and  
tell me what they are, Mr. Hannan? A. These are what  
we call toll tickets for long distance calls; the record of long  
distance calls.

Q. And are they records of the Southern Bell Telephone  
Company which are kept in the regular course of business? 776  
A. Well, these particular records were made up in the New  
York Company.

Q. I see. And they were sent to Florida? A. For col-  
lection, yes, sir.

Q. And they are made in the regular course of business?  
A. Yes, sir.

Q. And it is part of the regular course of business of  
the Southern Bell Telephone Company to keep such rec-  
ords, is that correct? A. That is correct.

Mr. Hilly: I will offer these in evidence, Mr. Toda-  
relli.

Mr. Todarelli: May I ask a preliminary question? 777

Mr. Hilly: Certainly.

By Mr. Todarelli:

Q. Mr. Hannan, when was the telephone installed? A.  
I did not look carefully at that date, but I believe it was in—

Q. Will you look at Government's Exhibit 9? A. The  
25th of October, 1941.

Mr. Todarelli: No objection.

The Court: Is there any objection?

*A. E. Hannan, for Gov't, Direct.*

778

Mr. Todarelli: No objection.

Mr. Hilly: No objection, your Honor.

The Court: It may be received and marked as an exhibit.

(Marked Government's Exhibit 10.)

Q. What was the telephone number of the telephone that was installed at 66 Northwest Fifth Street? A. 38006.

Q. Now looking at the first slip—

Mr. Hilly: If your Honor please, might I suggest, so that there can't be any question, that these slips be numbered A, B, C, D, E, F, G and so forth, because I am going to refer to them slip by slip.

779

The Court: Yes, do that.

(Marked Government's Exhibits 10-A to 10-K inclusive.)

Q. Now, looking at Government's Exhibit 10-A in evidence, does that show a telephone call, long distance telephone call? A. Yes, sir.

Q. To what number was it made? A. 38006.

Q. Is that the number of the telephone that was installed at 66 Northwest Fifth Street, Miami, Florida? A. Yes, sir.

Q. By whom was it made? A. A person giving the name of Alvin.

780

Q. And was it a prepaid or was it collect telephone call? A. Collect.

Q. And what number was charged with the expense of the telephone call? A. 38006.

Q. When was that call made? A. December 2, 1941.

Q. Now, with respect to Government's Exhibit 10-B in evidence, does that show a telephone call? A. Yes, sir.

Q. And where was the call made to? A. Miami 38006.

Q. And from where was it made? A. From New York.

*A. E. Hannan, for Gov't. Direct.*

Q. Is the same true with respect to Government's Exhibit 10-A? A. Yes, sir. 781

Q. Was that call prepaid or was it a collect call? A. It was a collect call.

Q. When was it made? A. It was made on November 30th.

Q. By whom was it made? A. Alvin.

Q. And what was the date of that? A. November 30th.

Q. With respect to Government's Exhibit 10-C in evidence is that a long distance call between New York City and Miami? A. Yes, sir.

Q. And to what number in Miami was that made? A. 38006. 782

Q. And from what city was it made? A. From New York.

Q. By whom was it made? A. Alvin.

Q. Is it prepaid or is it collect? A. Also collect.

Mr. Todarelli: To facilitate things, your Honor, I think he testified that they are all toll calls, aren't they?

Mr. Hilly: That is right.

Mr. Todarelli: All toll calls?

Mr. Hilly: That is right.

Mr. Todarelli: To save Mr. Hilly going through, I suggest that you merely ask him who made the call. 783

Q. Who made that telephone call? A. Alvin.

The Court: What was the date of that?

Q. What was the date of that telephone call? A. November 19, 1941.

Q. Now with respect to Government's Exhibit 10-D, who made that telephone call? A. Alvin.

Q. From what city was it made? A. From New York.

Q. To what number was it made? A. 38006.

*A. E. Hannan, for Gov't, Direct.*

- 784 Q. Who made that telephone call? A. Alvin.  
 Q. What is the date of it, Mr. Hannan? A. November 10, 1941.  
 Q. With respect to Government's Exhibit 10-E, who made that telephone call? A. Alvin.  
 Q. And to what number in Miami was it made? A. 38006.  
 Q. And who made the telephone call? A. Alvin.  
 Q. What is the date of the telephone call? A. October 29, 1941.  
 Q. Now with respect to Government's Exhibit 10-F, who made that telephone call? A. Alvin.  
 785 Q. And what is the date of that? A. November 10, 1941.  
 Q. Was it made to Miami? A. Yes, sir.  
 Q. From where? A. New York.  
 Q. And by whom was it made? A. Alvin.  
 Q. And what is the date of it? A. November 10, 1941.  
 Q. With respect to Government's Exhibit 10-G, who made that telephone call? A. Alvin.  
 Q. And where was that made to? A. Miami 38006.  
 Q. And from where was it made? A. New York.  
 Q. And what is the date of it? A. November 6, 1941.  
 786 Q. And with respect to Government's Exhibit 10-H, who made that telephone call? A. Alvin.  
 Q. And what is the date of it? A. November 4, 1941.  
 Q. And where was it made to? A. Miami 38006.  
 Q. And from where? A. New York.  
 Q. And Government's Exhibit 10-I, who made that telephone call? A. Alvin.  
 Q. When was it made? A. October 30, 1941.  
 Q. And where was it made to? A. Miami 38006.  
 Q. Where was it made from? A. New York.



*A. E. Hannan, for Gov't, Cross.*

Q. With respect to Government's Exhibit 10-J, who made that telephone call, Mr. Hannan? A. Alvin. 787

Q. And when was it made? A. November 13, 1941.

Q. And to what number in Miami was it made? A. 38006.

Q. And where was it made from? A. New York.

Q. With respect to Government's Exhibit 10-K, who made that telephone call? A. Alvin.

Q. And when was it made, Mr. Hannan? A. October 29, 1941.

Q. And to where was it made? A. Miami 38006.

Q. And from where was it made? A. New York.

Q. I don't know whether I asked you this question or no, but with respect to Government's Exhibit 10-F, where was that one made to? A. That was made to Miami 38006. 788

Q. And where was it made from? A. New York.

Mr. Hilly: If your Honor please, I have no further questions of this witness at this time.

CROSS EXAMINATION by Mr. Todarelli:

Q. To summarize, Mr. Hannan, Alvin made all of those calls to the same number in Miami, and all made from New York; is that right? A. From where, please?

Q. From New York to that same number in Miami? A. Yes, sir. 789

Q. Mr. Hannan, this application about which you testified, Government's Exhibit 9, was not signed, was it? A. No, sir.

Q. It was filled out by the company? A. Yes, sir.

Q. The name Pauline Hillson was filled out by the company, is that right? A. That is right.

Q. And bills were rendered to Pauline Hillson at that address? A. Yes, sir.

W. W. Davenport, for Gov't, Direct.

790

Q. And paid? A. No, sir.

Q. Not paid? A. No, sir.

Mr. Hilly: Thank you, Mr. Hannan. I have no questions.

(Witness excused.)

Mr. Hilly: W. W. Davenport, please.

WILLIAM W. DAVENPORT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

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Direct Examination by Mr. Hilly:

Q. Mr. Davenport, what is your occupation? A. I am with the Miami Police Department.

Q. In October and November, 1941, were you so employed? A. I was.

Q. To what squad were you attached? A. I was attached to the Morals or the Vice Squad.

Q. In Miami? A. That is right, sir.

792

Q. Let me direct your attention to the date of November 11, 1941. On that day did you go to the place known as the El Chico Hotel, located at 66 Northwest Fifth Street, Miami? A. I did, sir.

Q. Were you accompanied by anyone? A. Another officer, Detective Campbell.

Q. And at that place, the El Chico Hotel, did you make an arrest? A. We made an arrest of two females.

Q. What was the charge? A. The charge was disorderly conduct by being an inmate of a bawdy house.

Q. And by "bawdy house" that means a house of prostitution? A. A house of prostitution.

W. W. Davenport, for Gov't, Direct.

Q. Now, looking at Government's Exhibit 3 in evidence, is that the hotel that you proceeded to? A. That is right, sir. It is on the southeast corner of this intersection. 793

~~Q. Looking at Government's Exhibit 1 in evidence, is that a picture of one of the women that you arrested?~~ A. That is right, sir.

Q. Have you seen the other woman that you arrested that day? A. Yes, sir. I saw her just a few minutes ago for the first time since I have been back up here on this trial.

Q. At that time did you have a conversation with anyone? A. We in the course of the arrest, in booking— 794

Mr. Todarelli: The question is, did you have a conversation?

Q. Did you have a conversation with anyone? A. Yes.

Q. With whom did you have the conversation? A. The two suspects, prior to their booking.

Q. With respect to Government's Exhibit 1, the picture you identify as Mickey Roberts, did you have a conversation with respect to that woman? A. She is the one that did the most of the talking.

Mr. Todarelli: Your Honor, may I ask that the witness be directed to answer the questions? 795

The Court: Just answer the question. Did you have a conversation?

The Witness: Yes, I did.

Q. Will you tell the Court and jury what the conversation was? Now, wait for the objection.

Mr. Todarelli: May I object to that as not binding on the defendant, your Honor?

The Court: Yes. Objection overruled.

Mr. Todarelli: Thank you.

*W. W. Davenport for Gov't, Direct.*

796

Q. Will you tell us the conversation that you had?  
A. We were interested in why they had started this house of prostitution.

Mr. Todarelli: Would your Honor be good enough to have him answer the question?

The Court: Yes. Just tell to the best of your ability, Mr. Davenport, the conversation that you had with this woman.

797

The Witness: We asked her what gave her the idea that she could open up a house of prostitution there, and she said she thought that things had been taken care of. And we gave her strict orders that there was to be no prostitution there or anywhere else as far as she was concerned in the city, and that in case she was found in violation of that order she would be re-arrested and brought again on the same charges.

Q. Do you know what disposition was made of the cases, with respect to Mickey Roberts and the other woman? A. Yes. They pled guilty in City Court a few days afterwards on this charge of disorderly conduct and paid a fine I believe of \$25 and court costs. It came to about \$27.74.  
798 something like that.

Mr. Hilly: I have no further questions of this witness.

Mr. Todarelli: No questions.

The Court: That is all, Mr. Davenport.

The Witness: Thank you, sir.

The Court: Ladies and gentlemen, we are going to have a short session this afternoon. One of the attorneys in the case has a very important engagement and has asked me to adjourn at this time. So

*E. Sorrentino, for Gov't, Cross.*

you are now excused until tomorrow morning at 10:30. 799

(Adjourned to Thursday, April 17, 1947, at 10:30 o'clock a. m.)

New York, April 17, 1947,  
10:30 o'clock a. m.

Trial resumed.

ELIZABETH SORRENTINO, resumed the stand.

Cross Examination continued by Mr. Hilly: 800

Q. Mrs. Sorrentino, will you be good enough to write for me as I dictate? A. Is that permissible?

Mr. Hilly: Do what counsel asks, please, Mrs. Sorrentino.

Mr. Todarelli: Pardon? What did you say?

Mr. Hilly: She asked me if it was permissible. I am sorry if you did not hear me.

Will you please read my remarks to Mr. Todarelli. (Record read.)

Q. "Dear Daddy: I have been in the hospital with a stomach ailment. From now on I have to go to a clinic where they charge"— A. To a what? 801

Q. "to a clinic where they charge only 80 cents a treatment." A. All right.

Q. "I was happy to get back to the apartment which certainly needed a woman's touch. The lady next door has the cutest baby, always begging for somebody to play with her. I expect to get back to business soon. I received my license today"— A. Wait a minute. What was that last paragraph there?



*E. Sorrentino, for Gov't, Cross.*

802

Q. "I received my license today." A. No, before that please.

Q. "I expect to get back to business soon." A. Um huh.

Q. Do you have that? A. Go ahead.

Q. "I received my license to drive the car today and I hope that the garage will fix up the damages so that I can drive it. Thanks a lot for everything. Yours, Joyce."

(The witness hands paper on which she had written to Mr. Todarelli.)

Mr. Todarelli: May I have this marked for identification, your Honor?

803

The Court: Yes.

(Marked Defendant's Exhibit G for identification.)

Q. Mrs. Sorrentino, the other day when you were on the witness stand— A. Yes.

Q. —we were discussing the time when this case was dismissed in Florida? A. Yes.

Q. And I asked you some questions about that. A. Yes.

804

Q. Now, were you in Florida in February or March of 1942? A. No.

Q. You were in Jacksonville, weren't you? A. Oh, yes, in 1942.

Q. The early part of 1942 you were in Jacksonville, is that right? A. Yes, in the jail.

Q. Pardon me? A. In the jail there.

Q. Then you were bailed out? A. Yes.

Q. Now, thereafter, did you go down to Miami? A. I don't know.

*E. Sorrentino, for Gov't, Cross.*

Q. Where did you go after you were bailed out? A. 805  
Right to New York, right straight to New York.

Q. And how long were you here in New York before you  
saw the defendant? A. He met me at the train coming  
in from Jacksonville.

Q. And where did you go? A. To his apartment.

Q. And how long did you remain with him? A. Well,  
I don't—a couple of months, I would say.

Q. And that would bring us then up to about the spring,  
or the late winter of 1942, am I right? A. Yes, it would.

Q. Then where did you go? A. Well, I went home to  
my mother, and then I came back—no, that is wrong, too. I 806  
went—he asked me to go up and try to get a place to work  
up in Schenectady, in Troy, or Amsterdam, some place up  
there, in one of those towns that were open. So I went  
up there and I got a place in Amsterdam.

Mr. Pinto: I did not hear her.

Mr. Todarelli: Did the jury hear that?

Jurors: Yes.

Q. Did I understand you to say that he suggested that  
you go to Amsterdam? A. Yes, that is right.

Q. Did you testify at the trial before Judge Porterie  
as follows, and I am reading from the bottom of page 90: 807

“Q. You said something about when you went up to  
Amsterdam. Did Alvin go too? A. He knew I was going.

“Q. You had some of your own friends there? A.  
Where?

“Q. In Amsterdam. A. Sure, I got my own job in  
Amsterdam.

“Q. You got your own job? A. Yes.

“Q. Through your own friends? A. Yes.

“Q. That had nothing to do with Alvin? A. No, they  
did not know Alvin.”

*E. Sorrentino, for Gov't, Cross.*

808 Q. Were you asked those questions and did you give those answers?

Mr. Hilly: If your Honor please—

A. Yes, I did.

Mr. Hilly: Just a minute. All right, Mrs. Sorrentino.

The Witness: That is all right, I gave those answers. And he sent me up there, but he didn't know those people. He didn't know those. It was—

Mr. Hilly: Just a minute. If your Honor please, I don't object to Mr. Todarelli reading testimony when it contradicts the witness, but I submit that I don't think that contradicts the witness.

809

The Court: I will permit it.

Q. Mrs. Sorrentino, when you answered one of those questions that I read, as follows: "You said something about when you went to Amsterdam. Did Alvin go too?"

A. He knew I was going."

Did you make that answer? A. Yes, he sent me there. Of course he knew I was going, certainly.

Q. But you didn't say anything at that trial, at any rate— A. Probably I wasn't asked.

810

Q. You probably weren't asked, is that it? A. Yes, probably that was it.

Q. Did you remember testifying at any time during the trial before Judge Porterie that Alvin sent you up there? A. Well, I don't know, Maybe I did. I think so.

Q. Have you read the record of that trial? A. Of course not. I am not interested in the trials or nothing. Why should I be?

Q. Do I understand you, Mrs. Sorrentino, that you didn't read this testimony before you took the witness stand? A. Of course not.

*E. Sorrentino, for Gov't, Cross.*

Q. How long did you remain in Amsterdam? A. Well, I guess I remained up there maybe three weeks. 811

Q. Then what happened? A. Well, I got in a little difficulty there because I went in town, where I am not supposed to go, in town, on my day off I am supposed to go out. And he came twice to see me up there, and went to a hotel in town, and that is not allowed. You are supposed to go outside. But on the third occasion that I had the day off I went out, I stayed in town, and I was bowling with somebody that I knew up there, and that is not allowed, and I was told I couldn't work there any more.

Q. You were not arrested then? A. No, I was not arrested. 812

Q. What did you do after you left Amsterdam? A. Came back to New York. What else would I do?

Q. Where did you go? A. Well, I called him up and told him the story, and took a hotel, I can't remember the name—Times Square Hotel.

Q. Do I understand that when you came back to New York you called him up and told him you were back in town? A. Of course I did, sure.

Q. You did? A. Yes.

Q. Where did you go to live? A. I went to the Times Square Hotel to live. 813

Q. Did you see Kay during that time? A. Yes, I saw him twice. But then we were finished, then.

Q. Are you sure you didn't go to 98th Street to live? A. No. After that I did. But I mean, after, from the Times Square Hotel, I did; but I was all finished with him.

Q. I ask you were you asked these questions before Judge Porterie, at page 66, and did you give these answer:

Q. 'When did you next come back to New York City?

*E. Sorrentino, for Gov't, Cross.*

814 A. After that I was put out of town, out of the Town of Amsterdam, by the law and came back to New York after that.

Q. Would that be in February, 1942? A. March. I do not know. Gee, I forget, it is so long ago. Let us see now. Yes, I guess—no, no. That was March, March, March.

Q. Where did you live then when you came back to New York? A. I lived over at 98th Street."

Does that refresh your recollection that you went to 98th— A. Yes, I admit I lived at 98th Street after I came, after I moved out of the Hotel Times Square.

815 Q. And with whom did you live at 98th Street? A. By myself.

Q. Didn't you live with a Mrs. Jensen? A. No, no, no.

Q. Weren't you asked these questions and didn't you give these answers, continuing the same:

Q. With whom did you live? A. I would rather not answer that question.

Q. Did you live with Mrs. Jensen? A. Yes.

Q. When did you live with her? A. In February."

A. Well, that certainly doesn't sound like February now, does it?

816 Q. No, it doesn't. A. No, it doesn't.

Q. When did you go to live with Mrs. Jensen? A. I went there the time I was still with Alvin.

Q. Now, were you asked this question and did you give this answer:

Q. Was that before you went to Amsterdam? A. Yes. I forget, I am so confused I don't remember anything.

Q. During the time you lived with Mrs. Jensen did you see Arvin Kay? A. Yes."



*E. Sorrentino, for Gov't, Cross.*

Now— A. Of course

Q. What is your best recollection as to the time that you lived with Mrs. Jensen? Was it before you went to Amsterdam or after you came back from Amsterdam? A. Before I went to Amsterdam.

Q. Before you went to Amsterdam? A. That is right.

Q. Then when you testified at the prior trial that it was after you came back from Amsterdam when you went to 98th Street to live with Mrs. Jensen—

Mr. Hilly: That is not the testimony.

The Court: Wait a minute. The reporter can't get it if you both talk.

Mr. Todarelli: May I respectfully suggest, your Honor, that I am accurate in my statement that that is the testimony contained in the trial before Judge Porterje.

The Court: Read it.

Mr. Todarelli: Yes, sir, I will.

Q. "Q. When did you next come back to New York City? A. After that I was put out of town, out of the Town of Amsterdam, by the law and come back to New York after that.

"Q. Would that be in February, 1942? A. March. I do not know. Gee, I forget, it is so long ago. Let us see now. Yes, I guess—no, no. That was March, March, March.

"Q. Where did you live then when you came back to New York? A. I lived over at 98th Street.

"Q. With whom did you live? A. I would rather not answer that question.

"Q. Did you live with Mrs. Jensen? A. Yes."

Mr. Todarelli: That is the testimony.

Mr. Hilly: Yes. But read the next two questions:

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*E. Sorrentino, for Gov't, Cross.*

820

Q. When did you live with her? A. In February.

Q. Was that before you went to Amsterdam? A. Yes.

Mr. Todarelli: The question that I asked her, Mr. Hilly, was—

Mr. Hilly: That is not what we are arguing about.

Mr. Todarelli: The question I asked her—

The Court: Let us move along. Go ahead with your cross examination.

821

Q. The question I asked you, Mrs. Sorrentino, is this, when you testified that on your return from Amsterdam you lived with Mrs. Jensen, at that point in the testimony before Judge Porterie I say you were in error; is that right?

Mr. Hilly: That is not the testimony.

The Court: It was corrected later on.

Mr. Todarelli: Yes. I say at that point she was in error.

Mr. Hilly: That is merely quibbling, your Honor. If your Honor please, this is just—

The Court: Go ahead with your cross examination, Mr. Todarelli.

822

Q. Now, you say that it was before you went to Amsterdam that you lived with Mrs. Jensen?

Mr. Hilly: Objected to. The question has already been answered, your Honor.

A. I made a statement—

The Court: Let the question be read.

(Question read.)

The Court: Was it?

The Witness: Yes, it was, your Honor. I lived with her before—no. Yes, that is right.

*E. Sorrentino, for G. C. Cross.*

Q. Mrs. Seerentino— A. Wait, I got to think. You 823  
are not going to confuse me.

Q. You take your time, Mrs. Sorrentino. A. That is  
right. Let's see. Before I went to Amsterdam I was liv-  
ing with Mrs. Jensen, Judson, I forget her name now. Jen-  
sen or something.

Q. All right. You were not seeing Kay at the time,  
were you? A. Yes, I was.

Q. After you left Mrs. Jensen, what did you do? Did  
you go to Amsterdam? A. What do you mean after I  
left? I told you I went to Amsterdam.

Q. Do I understand that you left Mrs. Jensen and then 824  
went to Amsterdam? Is that right? A. That is correct.

Q. Were you asked these questions and did you give  
these answers?

Mr. Todarelli: Page 66.

Q. (Continuing) "Q. During the time you lived with  
Mrs. Jensen did you see Alvin Kay? A. Yes."

Mr. Hilly: If your Honor please—

The Court: Wait just a minute. He is coming to  
something else.

Q. ~~Q.~~ When did you meet him? A. I met him one  
night, but I was not living there any more, and I lied to 825  
him. I forget. I said that I was living there, but I was not  
living there any more. I was living with a couple of girls.

Were you asked those questions and did you give those  
answers? A. Yes, I did.

Q. Now, isn't it a fact then that you left Mrs. Jensen  
and went to live with a couple of girls? A. Oh, yes. I lived  
with them a couple of nights and he came and took me out  
and told me I couldn't stay anymore, and he put me in the

*E. Sorrentino, for Gov't, Cross.*

826 Dixie Hotel, and you can look up the records and you see the name is on there, Mrs. Alvin Kay, the Dixie Hotel. That is right.

Q. Mrs. Sorrentino, after you left Mrs. Jensen you went to live with a couple of girls, isn't that right? A. That is right. I stayed there a couple of days.

Q. And then you went to Amsterdam? A. That is right.

Q. Now, when he found out that you were living with a couple of girls what did he do? A. Well, he never did like those girls anyway.

827 Q. What did he do? What did he say? A. He was causing trouble, trying to break up this place. He was always causing them trouble.

Q. Did he get mad at you because you were living with these girls? A. Yes, he didn't like it, because he didn't like them either. They did something to him.

Q. What did you do? A. Well, he said, Alvin said, "I don't like them," he said, "I will get you a room in the Dixie Hotel," and he did, too.

828 Q. Now, you say that you saw Kay during the time you were living with the girls? A. Yes, I see him quite frequently.

Q. You were only with the girls a couple of nights? A. Well, I mean since the time I left him, when I took the apartment at Mr. Jensen's, and he said, "it is better the three of us separate for a little while because the cops are hot." O. K., I did.

Q. Just answer my question. You say you were with the girls a couple of nights, and you saw Mr. Kay during that time, is that right? A. I saw him, sure.

Q. He did not like the idea of your living with those girls, did he? A. That's right, he didn't like it.

*E. Sorrentino, for Gov't, Cross.*

Q. So what happened? A. So he went and got a hotel room. He took me to a hotel. 829

Q. Didn't you go back to Mrs. Jensen? A. Well, I often visited Mrs. Jensen, I guess.

Q. Were you asked these questions and did you give these answers?

Mr. Todarelli: Top of page 67.

Q. (Continued) The last answer that you gave was that you lived with a couple of girls and then the next question is this:

Q. What happened? A. He got awfully mad at me.

Q. What did you do? A. I ran like the devil. 830

Q. Where did you run? A. I ran to Mrs. Jensen's house.

Q. What time of the day or night was it? A. That was quite late at night.

Q. Did you go into the apartment? A. No, I ran into Mrs. Jensen's apartment.

Q. Where was Kay? A. Right after me.

Q. What happened after you got into the apartment? A. He raised the devil. He says, 'Why did you lie to me?' He wanted me to go home from the place of Mrs. Jensen. He says, 'This girl is a prostitute.' I am going to have you and her arrested. She is a prostitute. 831

Is that correct? Were you asked those questions and did you make those answers? A. Yes.

Q. Did you go to the Dixie Hotel? A. Yes, I did. That is the night that we were talking about the girls and everything, and I told him, why, I told him I was still living with Mrs. Jensen, and he says, 'I don't believe you', and this is what he thought, and that was because he didn't know about these girls until after.



*E. Sorrentino, for Gov't, Cross.*

832

Q. Didn't he object to your living with bad girls? A. He came after to me—

Q. Didn't he object to your living with bad girls? A. Oh, you make me laugh. Don't make me laugh, please.

Q. Didn't he object to your living with bad girls? A. He knew we were friends with them for a long time.

Q. Answer my question. A. He didn't object to anybody.

Q. He didn't object to it? A. He just didn't like these girls because they done something to him.

833

Q. On page 67 were you asked these questions and did you make these answers:

“Q. What did you lie about? A. I told him I was living there but I was not living there.

“Q. You told him you were living at the same place? A. He said I was mixed up with bad girls.

“Q. Did he want you to come back home? A. Yes, he said he loved me and he wanted me to come back to him.”

Were you asked those questions and did you give those answers? A. Do you know what it was for and why?

Q. Never mind what I want to know. A. He said these girls were bad; they were queer.

834

Q. Did you give those answers to those questions? A. I am just telling you.

Q. Now was it true that he objected to your associating with these bad girls, as he called them? A. They weren't bad.

Q. Was it true that he objected to your associating with those bad girls as he called them? A. That was something else. He called them something else. You would not want me to say it, would you?

*E. Sorrentino, for Gov't. Cross.*

Q. Whatever he called them, I see that you are thinking of something profane, is that right? 83

Mr. Hilly: Objected to, if your Honor please.

A. Of course.

Mr. Todarelli: I do not want profanity.

Mr. Hilly: I do not want profanity, either.

Mr. Todarelli: That is the only reason I asked that question.

The Court: Go ahead, Mr. Todarelli.

Q. Now, it was true, Mrs. Sorrentino, that he wanted you to come back home? A. If you put it like that, yes.

Q. Never mind how I put it. A. I said if you put it like that, yes. 836

Q. Were you working for him at the time? A. Yes, I was.

Q. Were you asked this question and did you give this answer, and it is the next question:

Q. You were not working for him at this time? A. No, I was not.

Q. Were you asked that question and did you give that answer? A. Well, I worked for him plenty. I don't know if I made a mistake there, but I certainly was working. He sent me up to Amsterdam. 837

Q. Were you asked that question and did you give that answer? A. If it is on the record, yes, I did. I probably misunderstood, because I have been working for him a long time up in Amsterdam.

Q. Was it true that you were not working for him at the time he had this quarrel about those girls? A. I was working for him at the time. I worked for him plenty.

Q. Were you asked these questions and did you give these answers:

838

Q. When had you stopped working for him? Let me see now. I left him in March. He came after and told me that he loved me and wanted me to come back to him. Then I went to Amsterdam. That is right.

Isn't it a fact that you stopped working for him as you say, and you separated from him and he came after you, and you told him you wanted to work for him, or go back and live with him, and then the next day you decided to go to Amsterdam; isn't that right? A. That is not true, no, it is not.

839

Q. Now, where did you go after you left Amsterdam? A. I told you I came back to New York.

Q. And where did you go in New York? A. Well, I got a place of my own.

Q. Where was that? A. Well, I told you the Times Square Hotel, and then I got myself a place on 98th Street.

Q. By yourself? A. That is right, until another man moved in with me.

Q. Kay did not live with you there, did he? A. No, he did not.

Q. You did not see him very often, did you? A. No.

Q. Can you fix the time that would be? A. No.

840

Q. Now, thereafter you did not work with Kay any more, did you? A. That is right, I didn't.

Q. And did there come a time after you went out on your own when you visited Kay with some men? A. True, true, yes, very true.

Q. Do you remember about when that was? A. No, I think it was in the summertime, I guess.

Q. Who were the men that were with you? A. Well, I remember Walter Morgan, that I knew very well.

Q. Yes. A. The other two names I don't remember.

*E. Sorrentino, for Gov't, Cross.*

Q. Was one named Herman? Would the name Herman refresh your recollection? A. Yes, that is right. One was named Herman, right.

841

Q. And would the name Eddie, the Sailor, further refresh your recollection? A. No, I don't remember Eddie. It may have been his name, but I am not sure.

Q. Well, it was Eddie the Sailor, wasn't it? A. Well, all right, so it was Eddie, I guess; I don't quite remember.

Q. Now, where did you go with these men? A. Well, I went up to see Betty first. I spied him outside and I asked him—, I said, "Look," I said, "I haven't got any money. I need money." I said, "After all the money I have given you," and so he said, "I wouldn't give you a nickel or a red cent because you aren't worth it."

842

Q. All right. And he refused to give you any money? A. That is right.

Q. And what did you do? A. I slapped him right in the face.

Q. What else did you do? A. Nothing.

Q. Did you smash his car? A. No, I didn't smash nobody's car.

Q. Did you kick and break the windows in his car? A. (No answer.)

843

Mr. Todarelli: Page 122.

Q. Were you asked these questions at the trial before Judge Porterie and did you give these answers? I have just two or three preliminary questions:

Q. How much money did you ask him for? A. I just asked him for money, that is all.

Q. I see. These men that went with you asked him, too, didn't they? A. That is correct.

Q. Did Al Kay refuse to give it to you? A. He refused to give it to me, so I smashed his car.

*E. Sorrentino, for Gior J. Cross.*

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Q. "Will you tell us how you smashed his car? A. I just kicked and broke the windows with my shoes."

A. I don't remember that I broke his car.

Q. Pardon? A. I don't remember breaking his car.

Q. Were you asked those questions and did you give those answers? A. If it is there I must have.

Q. Pardon? A. Yes, but I don't remember breaking his car, though. I think I kicked at it, but I don't know if I broke it, though.

The Court: Mrs. Sorrentino, the question simply is this: Were you asked those questions and did you make those answers?

845

The Witness: Well, if it is on the record, your Honor, then I ~~must~~ have.

The Court: All right.

Q. Now, Mrs. Sorrentino, your recollection of the events that transpired in 1942 was much clearer in August of 1943 than it is today, isn't that right? A. What was that question?

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Q. You remembered better when you were on the witness stand before Judge Porterle about what happened in 1942, the year before, than you remember today what happened in 1942, isn't that right? A. Why, certainly.

Q. All right. By the way, later on in your testimony you remembered that it was Frankie the Sailor and not Eddie the Sailor. Doesn't that refresh your recollection?

A. Well, I don't remember the names. I told you that.

Q. This name was Frankie. A. That is not important, because I don't remember the name.

Q. Now, after that happened did you see Kay? A. Did I see him?

Q. After you smashed his car did you see him? A.



*E. Sorrentino, for Gov't. Cross.*

I might have seen him a couple of times, I suppose. I straightened it all out with him.

847

Q. And was it then after you smashed his car, or some time after that that you talked to the agents of the Federal Bureau of Investigation about this case? A. No. What do you mean, in that year?

Q. Yes, in that year? A. No, they came up to my house in the wintertime.

Q. In the year 1942? A. I don't know. I guess it is about right.

Q. What is that? A. I guess so. I don't know what the date was. I know I got married and I got up home, and they came up to my house.

848

Q. Up in Amsterdam? A. No.

Q. Up in Canandaigua, I mean? A. That is right.

Q. When were you married? A. I was married October 22, 1942.

Q. Was your husband with you in Canandaigua when they came up? A. Yes, he was.

Q. And the F. B. I. questioned you up there? A. Yes, they did.

Q. When you say that your husband was with you, you mean Mr. Sorrentino? A. Yes.

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Q. How much did you ask Kay for? A. I didn't ask him for nothing, no amount.

Q. Didn't you ask him for \$1,000? A. Oh, no, I never said a thousand.

Q. I read from page 125 of the record before Judge Porterie. Were you asked these questions and did you give these answers:

"Q. Getting back to that incident you asked for \$300, is that correct? A. I asked him for more than that.

*E. Sorrentino, for Gov't, Cross*

850 Q. How much did you ask him for? A. About thousand.

Q. One thousand? A. Yes.

A. But I didn't say I asked him for a thousand, because I never asked the man for \$1,000.

Q. Well, how much? A. He wouldn't give it to me anyway.

Q. How much would about one thousand be? A. Well, I probably made a statement like that, but I did not mention the amount to him. I didn't.

Q. Well, you did not name any amount whatever? A. No, I didn't, not that I remember naming any amount to the man at all.

Q. Now, what did you mean, Mrs. Sorrentino, when you said that "I asked him for more than that," more than \$300? A. I don't know. Probably I was excited like if I asked that, and if I asked him for a thousand be sure I am going to tell you that I asked him for a thousand dollars, but I didn't ask him.

Q. Why did you testify— A. I asked him for money. That is enough right there.

Q. Why did you testify before Judge Porterie that you 852 asked him for about one thousand? A. I don't know why I did it.

Q. Were you telling the truth? A. Yes, I was telling the truth. I told the truth all along in there.

Q. Well, then, it is the fact that you asked for about \$1,000, isn't it? A. Well, see, I don't know what it was. I don't remember.

Q. Did you take these four men with you in order to help you get this money? A. No, they weren't helping me to get this money. They knew about it, because I said I am going over there, and I told them the whole darn story.

they said, Sure, you are entitled to the money, and after all one of the fellows knew Al in the cider stub and knew I worked there, because he was a customer in that place. He said, "Yes, you're entitled to it." 853

Q. Did any of the men that you had with you tell Al he ought to give you a thousand dollars? A. I don't know. Maybe, I can't remember. I can't even remember the conversation.

Q. Did you tell him what you would do if he did not give you the \$1,000? A. No, I don't remember telling him what I would do.

Q. Did you tell him that you would smash his stores for him if he didn't give you the \$1,000? A. Probably. Maybe I could have been in a rage there and I suppose I could have. 854

Q. Well, did you or didn't you? A. I am not sure that I told him that or not.

Q. Didn't you say that "If you don't give me \$1,000 you are going to get in trouble"? A. No, not to my recollection I didn't tell him anything like that.

Q. Well how many times did you talk with the F. B. I. agents together during the year 1942? A. What?

Q. How many times did you talk with the F. B. I. agents during the year 1942? A. I don't know, not very many. 855

Q. Well, was it twice, five times, 20 times, give us the best of your recollection that you have? A. When they came up to my house in Canandaigua and asked me—

Q. Well, after— A. They came up there once.

Q. Once. A. Once up there, and then another agent, whoever he was, he came again and then said to come to New York because of something—I don't understand it anyway. Anyway, twice up there.

*E. Sorrentino, for Gov't, Cross.*

856

Q. Now, at that time you were not living with Kay when you talked to them at Canandaigua, is that right?

A. That is true.

Q. And you were no longer in love with Kay, were you?

A. That is true, too.

Q. And you, as a matter of fact, had a great deal of hatred in your heart for Kay, didn't you? A. Well, I was all right up there. I didn't even think about him.

Q. At the time that the F. B. I. agents talked with you in Canandaigua you had hatred in your heart toward Kay, didn't you? A. I had no feelings whatsoever toward him.

857

Q. Didn't you have hatred in your heart for Kay?

A. I did not have—I don't know. I was disgusted with him because he was so rotten and so low.

Q. Didn't you hate Kay when you went up and asked him for this money? A. Did I hate Kay when I asked him for this money?

Q. Yes. A. Yes, of course I did. I must have hated him.

Q. By the way, Mrs. Sorrentino, did you have lunch yesterday with Mr. Peacock? A. Yes, I did.

858

Q. Getting back to 1942, between the time that you came back from Amsterdam and the time that you went back up home to Canandaigua, were you arrested at all? A. Yes, I was.

Q. Now, Kay wasn't living with you at the time, was he? A. No, he was not.

Q. Nor did you see Kay at the time, did you? A. No.

Q. And what was the charge? A. Prostitution.

Q. Where was that? A. Oh, it was over on the West Side.

*E. Sorrentino, for Gov. F. Cross:*

Q. What happened? A. That is none of your business: I said I was arrested for prostitution. That is enough. 859

Q. What did the Court do with you? A. They found me guilty.

Q. And? A. They gave me a year's probation.

Q. What were the conditions of that probation? A. I am supposed to report, but instead I got married and went up home to live with my mother. And that was all straightened out.

Q. You pleaded not guilty and stood trial, didn't you? A. Yes, that is true. 860

Q. You were asked certain questions in that trial? A. That trial hasn't anything to do with now and I don't care to answer anything about it. They found me guilty, and that is enough.

Q. Were you asked about— A. I refuse to answer any questions about the trial because I don't think it has any connection. I have just admitted I was arrested for prostitution and found guilty, got a year's probation. That is enough.

Q. Were you asked in that trial— A. I am not answering your questions. 861

Q. Were you asked in that trial about Alvin Kay? A. Yes. The probation officer, she says to me, "Why don't you", she says,—

Q. No. A. —"Why don't you tell the truth about him?"

Q. No. During the trial, Mrs. Sorrentino. A. I don't know.

Q. Did the judge ask you about Alvin Kay? A. No, he didn't even—I didn't even mention him. The probation



*E. Sorrentino, for Gov'l, Cross.*

862 officer afterwards did, though. How she knew, I don't know.

Q. Do you remember on August 21, 1942, when you came up for sentence before Magistrate Morris Rothenburg that you were asked this question and gave this answer: "Who is this man Mr. Kay? A. He tried to get me out, that was all, your Honor."

Is that correct? Were you asked that question and did you give that answer? A. Oh, you made a terrible mistake. I don't even remember anything like. Only the probation woman, I remember her telling me to tell the truth about him anyway, he was a bad actor, she said. That is all I remember. And the woman—what the heck was her name again? Oh, her name was the same as mine, Johnston.

The Court: The question is, Mrs. Sorrentino, do you remember being asked that question?

The Witness: No, I don't remember, because I don't think I was.

Mr. Todarelli: I don't know whether the record ought to indicate what I am reading from, your Honor. I am reading from the official stenographer—  
864—I mean, the stenographer's minutes of the case on that day and before that magistrate.

The Court: Very well. Let the record so show.

Q. Do you now remember that you gave that answer?  
A. No, I don't remember. I can't say anything I don't remember to.

Q. Now, you were directed as part of your probation to go to the Isaac Hopper Home, is that right? A. Yes, that is true.

*E. Sorrentino, for Gov't, Cross.*

The Court: The witness is excused; we will take a recess for ten minutes. 865

(Short recess.)

Mr. Todarelli: What was the last question, Mr. Reporter?

(Question and answer read.)

Q. And you did not go there? A. No, but I called them

Q. Isn't it a fact that thereafter a warrant was issued for your arrest because you had failed to comply with the terms of the probation? A. No. Not that I know of any way. They knew where I was.

Mr. Todarelli: I ask that this be marked for identification, please. 866

(Marked Defendant's Exhibit H for identification.)

Q. I ask you to look at Exhibit H, Mrs. Sorrentino, and read both sides, if you will, please, and then tell me—well, I will ask you the question after you have read it. A. Well, it is true, that they knew where I was, up home.

Q. No. Have you read both sides? A. Both sides?

Q. Yes. A. (Refers to paper.) I don't know anything about it. I got married. I wasn't doing anything wrong. 867

Q. Have you read both sides? A. Yes, I read both sides.

Q. Does that refresh your recollection that a warrant was issued for your arrest because— A. I don't know, only what I saw on there. I suppose so. They knew where I was. They knew I was up home with my folks. All right, I seen it, that is enough.

Q. I ask you to read this. A. I said yes, yes. I said yes. All right?

*E. Sorrentino, for Gov't, Cross.*

868 Q. Will you read these lines? A. "I have made a diligent effort to locate the defendant and I am unable to find her."

Q. Does that refresh your recollection that they did not know where you were? A. Well, I suppose it was down there. I don't know. It must have been made a couple of weeks after that or something, because they knew where I was, up home with my folks.

Q. Did you notice, Mrs. Sorrentino, that this is dated and sworn to February 26, 1943? A. No, I did not look at the dates.

869 Q. You went up to Canandaigua, I think you said— A. Oh, yes, I remember. He had a subpoena on my mother, that he dragged her into court or something about me. Oh, of course. And he went and told them that I was wanted and all.

Q. Just a minute, Mrs. Sorrentino. I am asking you this question. You went up to your mother's in October, 1942, is that right? A. Yes, I think it was then.

Q. Is that right? How long were you there? A. Well, I was there until the spring, and then I came back with my husband, and after that—well, that time I had seen the FBI. I told them about the situation.

870 Q. Were you in Canandaigua in February, 1943? A. Yes, I was.

Q. Were you? A. I think so.

Q. You said that the authorities knew where you were? A. Yes, they did know where I was.

Q. Do you know John Pacifico? A. If I am not mistaken I think he was the arresting officer. I may be wrong. I don't know.

Q. Did you know in February, 1943, that he was looking for you? A. No, not to my knowledge anyway.

*E. Sorrentino, for Gov't, Cross.*

Q. Have you ever been arrested for violating the terms of that probation requiring you to go to the Isaac Hopper Home? A. Was I ever arrested for violating that? 871

Q. Yes. A. No.

Q. Do you know that the warrant is still outstanding? A. If you say so, I suppose so.

Q. When did you come back from your mother's in 1943?

A. It was in the springtime, I remember. I came back with my husband.

Q. Between the time you went up to your mother's when the FBI men talked with you and the time when you came back to New York, you had several talks with agents of the FBI, is that right? A. No, I had not. You mean up home? I only saw them up there twice. 872

Q. Twice? A. Yes.

Q. When you came back to New York did you have some talks with them then? A. Yes.

Q. About how many in New York? A. Gee, I don't know. I can't remember.

Q. Would it be a half a dozen, would it be a dozen, two dozen? A. I wouldn't say because I don't want to say anything wrong about how many visits I had.

Q. Did you testify before the Grand Jury down here? A. Isn't this the Grand Jury (indicating)? 873

Q. No. The Grand Jury, where there were twenty-three men in another room—

Mr. Hilly: That is not a correct statement.

A. I don't understand.

Mr. Hilly: In view of the modern development.

The Court: There may have been some ladies there, Mr. Todarelli.

Mr. Todarelli: Sir?

*E. Sorrentino, for Gov't, Cross.*

874

The Court: There may have been some ladies on the Grand Jury.

Mr. Todarelli: Oh, I am sorry. I mean twenty-three jurors. I assume that that is still so, there are twenty-three on the jury?

Mr. Hilly: Yes, there are twenty-three on the Grand Jury.

Q. Do you remember, testifying before a large group of men of approximately twenty-three, men and women?

A. I came down here.

875

Q. Yes. And do you remember that? A. They just asked me four questions about it and that was all, and I went.

Q. Just four questions? A. Yes.

Q. And after you testified, do you remember, were you told that Kay had been indicted? A. No, until they came after me again for the trial.

Q. When did they come after you for the trial? A. Well, I don't know. It was in the summertime some time.

Q. Summertime? A. I don't remember the dates. I don't know. Gee.

876

Q. If I were to tell you that the first trial before Judge Clancy took place in July, 1943— A. Well, isn't that the summertime?

Q. Yes. Can you tell me about when they came after you with reference to July, 1943: was it a month or a week or two months; about? A. I guess maybe a couple of weeks or a week, or something like it, before.

Q. Before that had you had Kay arrested? A. Well, before the trial?

Q. Yes. A. I sure did.

Q. What did you charge him with? A. Well, he was always bothering me anyway.



*E. Sorrentino, for Gov't, Cross.*

Q. No. What did you charge him with? A. He was threatening me all the time. 877

Q. Did you come down and tell Mr. Wallace or some assistant district attorney and FBI agents that he threatened you? A. Yes, I did.

Q. And as a result of that was Kay arrested? A. Uh huh.

Q. And did you go down with someone else when you made that charge? A. Did I what?

Q. Did you go down with someone else when you made that charge? A. Yes, I did.

Q. With a girl named Virginia Cole? A. That is right.

Q. Do you remember that Kay was held in bail of \$5000? A. I don't know what he was held under. I don't remember. 878

Q. Later on do you remember that Virginia Cole went down and said that the charge was false? A. No. I called up and told them because she started—because she used my name. She called up over the phone and she says, Mr. Wallace, this is Joyce, she says, my God, I goes to go into the cider stube and he threatened to hit her over the head with a chair.

Q. What did you tell the agents or Mr. Wallace? A. Oh, I told him after that. I said— 879

Q. No. A. I told him the whole darn truth about the mess.

Q. Mr. Sorrentino, just a minute. Listen to the question, please. When you went down and made this charge against Kay what did you tell Mr. Wallace or the agents that Kay had done? A. Well, I was quoting there what he had done before.

Q. What did you tell Mr. Wallace and the agents that Kay had done? A. Well, I told him that he threatened

*E. Sorrentino, for Gov't, Cross.*

880 me, which he had done previously to that. He always threatened me, for gosh sakes.

Q. Did you tell Mr. Wallace and the agents that he threatened to kill you? A. Oh, he has. Yes, he has. He—

Q. Didn't you tell Mr. Wallace and the agents that he threatened to kill you? A. Yes, he did.

Q. Did you tell Mr. Wallace and the agents? A. I said yes, I did.

Q. All right. Had he threatened to kill you? A. Not at that time; but before that he did.

881 Q. Then the charge that you made against him was false? A. Yes, and I straightened that right out.

Q. In every respect; wasn't it? A. Yes, but I straightened it out because I came down and told those people, because I didn't start it.

Q. But you falsely accused him of intimidating you, didn't you? A. Well, he has intimidated me lots of times. Every place I moved he has been bothering me.

Mr. Todarelli: I respectfully urge that you ask the witness to answer the questions, please.

The Court: Yes. Just wait until the question is finished, then you can make your answers.

882 Q. The charge that— A. Yes.

The Court: Will you wait for the question to be finished—

The Witness: I am sorry.

The Court: Then make your answers.

Q. The charge that you made against Kay and lodged with Mr. Wallace and the agents was false in every respect, wasn't it? A. No. For different times—for that time it was, but before that it is not false. Don't interrupt me now. Before that.

Mr. Todarelli: Now, your Honor—

*E. Sorrentino, for Gov't, Cross.*

The Witness: At that time it was false.

883

The Court: I think she is perfectly right. You started to interrupt her. Let her finish her answer.

Mr. Todarelli: Would your Honor take over the witness, please? I think that I would be derelict in my duty if I permitted her to ramble on about other things about which I am not questioning her.

The Court: Read the question. Read the question and her answer.

(Question and answer read.)

The Court: Now, go on with your cross examination.

884

Q. Did you tell Mr. Wallace that he had met you in front of the Woolworth Building and threatened you? A.

A. Yes, I did. Yes, I did. I admit that. Yes, I did.

Q. Did you tell Mr. Wallace and the agents that he threatened that if you testified against him he would kill you? A. He threatened me with a knife before that.

The Court: No, that is not the question.

The Witness: Yes, I did. But I don't remember just exactly what I did say then. But he did threaten me. I mean, not that time. No excuse.

Q. The charge that you lodged with Mr. Wallace where you said that he had met you in front of the Woolworth Building and threatened you in the event you testified against him, came out of the hatred you had in your heart for him at the time, didn't it, Mrs. Sorrentino? A. No. Because he—no.

885

Q. Didn't it? A. No. You asked me a question and I am going to answer this now, because that man is always—every time I moved any place he has been up there bothering me. He broke up my husband and my home. What do you people want?

*E. Sorrentino, for Gov't, Cross.*

886

Mr. Todarelli: I move to strike it out.

The Court: Just a minute.

Mr. Todarelli: I move that the answer be stricken out after the word "No".

The Court: Yes. It may be stricken.

You will get through a lot sooner, Mrs. Sorrentino, if you just answer the question.

The Witness: I know, your Honor, but all this stuff is bad enough, I have been so bad enough in my life, but he is making me so low. I admit I have been bad.

887

Mr. Todarelli: I move to strike it out.

The Court: No. That statement may stand because it was in answer to a question I asked her.

Mr. Todarelli: Would your Honor read the question and answer and you will see—

The Court: No. Go on with your cross examination, Mr. Todarelli.

Q. Did you ever tell anybody that it was Virginia Cole who persuaded you to lodge this intimidation charge against Kay? A. Yes, I did.

Q. Was that true? A. Yes, it was.

888

Q. At the time that you lodged this charge were you asked to give a written statement? A. I think I was, yes.

Mr. Todarelli: I now call upon the Government to produce that statement.

Mr. Hilly: I don't know whether there was such a written statement, if your Honor please, because I was not in charge of the prosecution at that time.

The Court: Have you such a statement in your possession?

Mr. Hilly: I am in no position to advise your Honor at this time on it. I will look for it, and if it

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is there I will advise your Honor with respect to the facts on it. But I do not think, if your Honor pleases, that, if such a statement does in fact exist it is available to Mr. Todarelli; I do not think that a proper foundation has been laid for it. As I understand the law with respect to the production of statements, it has to be produced if it contains anything that is contradictory. I submit, if your Honor please— 889

The Court: Well, the statement will be the best proof of that.

Mr. Hilly: Yes.

The Court: You look and see if you can find it. 890

Mr. Todarelli: Your Honor, I am sorry, I was conferring with Judge Pinto and I don't know what disposition was made of my request.

The Court: Mr. Hilly is going to look to see if he can find such a statement.

Mr. Todarelli: Thank you.

By Mr. Todarelli:

Q. Did you thereafter go down to the District Attorney and tell him that your charge was false? A. Yes, I did. Before I took—before I went to the trial. 891

Q. You did that after Virginia Cole had gone down first, didn't you? A. No. I went down on my own. Oh, yes, I did.

Q. Isn't it a fact that Virginia Cole went down first? A. No.

Q. And told the District Attorney that she had lied and then you were called in? A. No, that is not so. No.

Q. Didn't you admit to Mr. Wallace when you were called in that you had lied about it? A. No, I wasn't call—



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893 ed in. I called up two FBI men myself and told them. They came and met me and I told them. It is the truth.

Q. Whom did you call up? A. I called up Mr. Rumans. I am not sure if it was Mr. Lane or Mr. Hoaglund that came down. It was a rainy day, I remember that. And I met them down at 42nd Street, in the terminal there, or in the subway thing.

Q. And thereafter the trial took place? A. Yes. And I said what I had done in the trial.

893 Q. You know that that complaint is still pending today, here in this building before the United States Commissioner? A. He has threatened me, he has threatened me so many times. I don't see how a thing could be pending.

Mr. Todarelli: I move that the answer be stricken out.

The Court: Wait a minute, Mrs. Sorrentino. The question is, do you know whether or not that complaint is still—

The Witness: No, I don't know.

The Court: Very well.

894 Q. After you testified in the trial before Judge Clancy and then before Judge Porterie, were you then arrested again? A. Yes. He had me arrested, he had me arrested and framed, too.

Q. Just a minute. Were you arrested at the same time that Virginia Cole was? A. Yes, because he did it. I know he did it because the cops, he tipped his hat to him to let them know, and I was arrested. I wasn't working and doing anything, because I was married and settled down. That is what he did.

Q. Do you know a man by the name of Louis Tobkes? A. Yes. That is the officer that he knows.

*E. Sorrentino, for Gov't, Cross.*

Q. Pardon me? A. That is the officer that arrested us girls: 895

Q. He arrested you, didn't he? A. Yes, he did.

Q. That was on November 17, 1943? A. Yes, that is right. But I got dismissed because I didn't do nothing in the first place.

Q. Do I understand you to say that the defendant caused you to be arrested? A. Yes, he did.

Q. Do you mean that he conspired— A. Yes.

Q. —with Patrolman— A. Yes, he did.

Q. —Tobkes? A. Yes, he did. I do say it because he did it. 896

Q. Do you remember that at the same time you were arrested Virginia Cole was arrested also? A. Yes. And he meant to get me, not her, though.

Q. By the same patrolman? A. Yes.

Q. Do you say the defendant Kay— A. Yes, because when we were taken right out—.

Q. Let me finish my question.

The Court: Wait a minute. Wait until the question is finished.

Q. Do you say that the defendant Kay also caused Virginia Cole to be arrested at the same time? A. He made a mistake probably, because it was me he was after. 897

Q. I ask you again, do you say that the defendant also caused Virginia Cole to be arrested at the same time? A. Yes.

Q. You were acquitted of that, weren't you? A. Certainly, because I was not guilty, I hadn't done nothing.

Q. You were doing nothing? A. That is right. I was only visiting her. And she didn't do nothing either.

Mr. Hilly: If your Honor please, I think that

*E. Sorrentino, for Gov't, Cross.*

898

Mr. Todarelli is prepared to stipulate on the record that that charge was dismissed.

Mr. Todarelli: She said so.

Mr. Hilly: Are you prepared to stipulate it?

Mr. Todarelli: Certainly.

Mr. Hilly: Then would your Honor instruct the jury that anyone can be arrested and that that is not to be taken as evidence of anything?

The Court: Well, I think the jury understand it. It appears that she was tried and acquitted, found not guilty.

899

Mr. Todarelli: May I have these marked.

(Marked Defendant's Exhibits I through P for identification.)

Q. I show you Defendant's Exhibits I to P, inclusive, and I ask you if you wrote those cards or papers? A. Do you mind if I look at every one of them?

The Court: Yes, you may look at them if you wish.

Q. Certainly. A. Knowing you as I do, I have to look through everything.

Mr. Todarelli: May I approach the bench with Mr. Hilly, your Honor?

900

The Court: Yes.

(Conference at the bench between Court and counsel off the record.)

Q. What is your answer? A. I sent them. They are mine. I sent them.

Mr. Todarelli: May I read them?

Mr. Hilly: I don't think they are in evidence yet.

The Court: Are they admitted in evidence?

Mr. Todarelli: Oh, I am sorry. I offer them.

*E. Sorrentino, for Gov't, Cross.*

Mr. Hilly: If your Honor please, I object to the admission of these exhibits on the ground that I think they are irrelevant, incompetent and immaterial. 901

The Court: Let me see them.

(Mr. Hilly hands to Court.)

The Court: Well, without looking at all of them, Mr. Todarelli, is there anything on them that is improper?

Mr. Todarelli: No, your Honor.

The Court: They are just greeting cards, all of them?

Mr. Hilly: That is all they are, your Honor. 902

Mr. Todarelli: Yes, your Honor.

The Court: I will allow them. You are not asking to read the printed verse that is on these greeting cards?

Mr. Todarelli: Oh, no.

The Court: They may be admitted.

(Defendant's Exhibits I through P for identification received in evidence.)

The Court: Most of us buy greeting cards and never even bother to read what is in the verse, you know. Just describe what it is to the jury and read what the witness wrote. 903

Mr. Todarelli: This is a greeting card. I won't read the greeting, but the description, if I may. I am reading from Exhibit No. P.

Q. Mrs. Sorrentino, the handwriting in ink is your handwriting, isn't it?

The Court: She has already said they were addressed to the defendant, Mr. Todarelli.

Mr. Todarelli: I just want to know if she wrote them.

*E. Sorrentino, for Gov't, Cross.*

904 Q. You did write all of this, whatever is in ink on there?  
The Court: The answer is Yes.

A. Yes.

Mr. Hilly: Ink or pencil. There is some in pencil.

Mr. Todarelli: All right.

(Mr. Todarelli read Defendant's Exhibit P to the Court and jury.)

The Court: They are all addressed to the defendant, Mr. Todarelli.

Q. You sent all of these to the defendant, did you not?

A. Yes.

905 The Court: The answer is Yes.

Q. And at that time you were in love with him, were you not?

The Court: Now, Mr. Todarelli, just go ahead and read them to the jury as you asked permission to do.

Mr. Todarelli: I am going to question her about this one by one, and I thought I might save time by reading it first and then questioning her.

The Court: She has already testified that she was in love with him. Go ahead and read the exhibits.

Mr. Todarelli: O for identification—

906 Mr. Hilly: In evidence.

Mr. Todarelli: That is right. O in evidence is addressed to Mr. Alvin Kay in her handwriting.

(Mr. Todarelli read Defendant's Exhibit O to the Court and jury.)

Mr. Todarelli: And N is addressed "to my sweet heart".

(Mr. Todarelli read Defendant's Exhibit N to the Court and jury.)

(Mr. Todarelli read Defendant's Exhibits K, I and L and J to the Court and jury.)



*E. Sorrentino, for Gov't, Cross.*

Q. Now, at the time you wrote these cards you were madly in love with the defendant, were you not, Mrs. Sorrentino? 907

Mr. Hilly: Objected to as having been answered several times, your Honor.

The Court: I think it has already appeared, Mr. Todarelli.

Q. Weren't there other cards that you sent to the defendant besides the ones that I have read in evidence? A. I suppose so.

Q. There were many others, weren't there, Mrs. Sorrentino? 908

The Court: She said, "I suppose so."

Q. There were many others, weren't there? A. I just answered the question. I said, "I suppose so."

Mr. Todarelli: Juror No. 1 desires to address the Court.

Juror No. 1: Your Honor, may I ask a question?

The Court: Yes.

Juror No. 1: I think it might be helpful to the jury if we were given the dates of those cards, approximately.

The Court: Are the dates on them, Mr. Todarelli? 909

The Witness: I think most of them have no dates.

Mr. Todarelli: They have no dates.

Juror No. 1: Thank you.

The Court: They were not sent through the mail?

The Witness: They were not sent through the mail.

Juror No. 1: Thank you, sir.

The Court: The jurors understand that later on you will have an opportunity to examine all of the exhibits in the case:

*E. Sorrentino, for Gov't, Cross.*

910 Q. They were not sent through the mails? I mean they were not enclosed in another envelope, were they, Mr. Sorrentino? A. No.

Q. And sent through the mails? A. No, I just handed them to him when I came home or something like that, or when I seen him and he picked me up after work, or some thing, and I just gave them to him.

Q. And these were all given to him or left for him before the trip to Florida in October, 1941? A. Even after the trip, too, I guess. I suppose so.

Q. Even after the trip? A. Yes, I guess so.

911 Q. And would you say about the time when you went back to Amsterdam? A. I guess so.

Q. All right. A. I am not sure.

Q. And at the time that you gave him some of these cards or other cards, did you also give him gifts? A. Yes, I gave him.

Q. While you were in Florida during the months of October and November, 1941, did you receive any money from Kay? A. No, I didn't receive any money.

Q. Did Betty receive any money from him? A. I think she did. I am not sure.

912 Q. Don't you know of your own knowledge that Kay sent money on at least four separate occasions to Betty? A. Oh, I remember once there that she got some money from him because she needed some extra money for some pictures, or something.

Mr. Todarelli: May I have these marked for identification? And, Mr. Clerk, if you will be good enough to attach the check to each one and mark them separately. Also this one, and this one.

(Marked Defendant's Exhibits Q and Q-1 for identification.)

*E. Sorrentino, for Gov't, Cross.*

tification; R and R-1 for identification; and S and S-1 for identification.)

913

Q. Mr. Sorrentino, I show you-- A. I don't know anything about them if they are not addressed to me, so naturally I wouldn't know.

Q. I show you a photostat of a telegram of yours marked Q for identification, and I ask you if you ever saw the original of that? Will you please read it before you answer? Did you ever see that telegram? A. No.

Q. Did Pauline Hillson ever show it to you? A. Not that I remember. I don't remember the telegrams, or things like that.

914

Q. Did Pauline Hillson show you the check that was-- A. No, Pauline never or Betty, whatever you want to call her, ever showed me anything in connection with Al about money, because he and her handled that end of the business.

Q. Do you remember in October, 1941, Pauline told you Kay wanted her to give you \$15? A. I don't remember.

Mr. Hilly: Wait a minute, Mrs. Witness.

Mr. Todarelli: Just a minute.

A. I don't remember.

The Court: Just a moment, Mrs. Sorrentino.

915

Mr. Hilly: If your Honor please, Mr. Todarelli is reading from something that is not in evidence. He is prefixing it with a question, but actually he is reading from it.

The Court: Were you reading from something not in evidence, Mr. Todarelli?

Mr. Todarelli: I was taking some information out of here, but I was not reading the same thing.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: She may answer that.

*E. Sorrentino, for Gov't, Cross.*

916 Q. Do you remember, Mrs. Sorrentino? A. No, I don't.

Q. I show you Exhibit R-1 for identification, and I ask you if you ever saw the original of which this is a photostat? A. I didn't see any of these telegrams. Betty got them; I didn't.

Q. You never saw it? A. No.

Q. I show you Exhibit S-1 for identification and— A. I told you.

Your Honor, I told this man I never seen any of these whereas I haven't.

917 The Court: All right. That is all you have to say, Mrs. Sorrentino.

The Witness: And he keeps asking me over and over again.

Q. Didn't Betty ever give you any money— A. No, I gave her money.

Q. Let me finish my question, please, Mrs. Sorrentino. Did Betty ever give you any money in Miami, Florida? A. No.

Q. And if she told you Kay had sent for you? A. Not that I ever remember.

918 Q. Not that you remember? A. No, because we were making it there. She didn't have to give me any money. I had enough money.

Q. Didn't you tell me, Mrs. Sorrentino, that during the first week that you were there you didn't work? A. But we did work after.

Q. I understand, but I say didn't you tell me that during the first week that you were there you didn't work. A. Uh huh.

Q. Now, during that week did Miss Hillson, or Miss Sookerman, whatever you want to call her, give you any

*E. Sorrentino, for Gov't, Cross.*

money that she said Kay had sent? A. I can't remember that.

919

Q. Did Kay ever write to you while you were there and send you money in the letter? A. He wrote to me, yes.

Q. Beg pardon? A. He wrote to me, yes.

Q. And did he send you money in the letters that he sent you? A. No.

Q. No? A. No, he didn't.

Mr. Todarelli: May I have these four slips marked as one exhibit, please?

The Court: You may.

(Marked Defendant's Exhibit T for identification.)

920

The Court: The slips have been marked, Mr. Todarelli. Will you continue with your cross examination, please?

Q. I show you Defendant's Exhibit T for identification, and I ask you to look at those four slips and tell me if they refresh your recollection as to any moneys that were sent for you by the defendant? A. Yes, I sent this out here, but I used his name—no, that is right. This is to my mother. I don't want my mother's name in this case at all anyway.

Q. When did you last see your mother? A. I don't want my mother in this case at all.

921

Mr. Hilly: I do not think that is material, if your Honor please.

The Court: No, I don't think so either.

Q. Where do you live now, Mrs. Sorrentino?

Mr. Hilly: Objected to, if your Honor please.

A. I wouldn't say because he would be up there bothering me.

The Court: That question was asked the other day and she said she would prefer not to state it.



*E. Sorrentino, for Gov't Cross.*

922

Mr. Hilly: If Mr. Todarelli wants the address I will give it to him, but I am not going to put it on the record. I do not think it is material on the record, if your Honor pleases.

Mr. Todarelli: I think we are entitled to know that, your Honor.

The Court: In my discretion I will exclude the question.

The Witness: Thank you.

923

Mr. Todarelli: Very well, sir. I have a new tack that I will pursue and that will take about an hour, and then I will be through.

The Court: Do you expect to terminate this cross-examination, soon?

Mr. Todarelli: Yes.

The Court: Go ahead with it.

Mr. Todarelli: I mean I could finish today.

The Court: Well, we will work until one.

Mr. Todarelli: All right, sir. May I have the statement that was made to Mr. Trost, please?

(Mr. Hilly handed paper to Mr. Todarelli.)

924 Q. Now, I show you once more, please, Exhibit 5 in evidence, which is a statement you made to Mr. Trost at Buffalo. A. In where?

Q. At Buffalo. A. No, I never made no statement.

Q. Or Canandaigua, I am sorry. A. Yes, that is right.

Q. All right. A. Is that the exhibit?

Q. What did you say, Mrs. Sorrentino? A. I want to make sure it is the exhibit.

The Court: Yes, it is, Mrs. Sorrentino.

Q. Were you asked how long you had known the defendant by Mr. Trost?

*E. Sorrentino, for Gov't, Cross.*

Mr. Hilly: Just a minute, please, Mrs. Witness. I object to this, if your Honor pleases. I am of the opinion that this was pursued in the earlier part of this witness's cross examination. I think this entire statement had been covered at that time.

925

The Court: I thought it had, too, Mr. Todarelli.

Mr. Todarelli: I thought it had, too, until last night, your Honor.

The Court: Well, I am quite convinced of it.

Mr. Todarelli: But when I went over the record—

The Court: I think we are wasting considerable time on repetition here, Mr. Todarelli. This case is dragging unreasonably.

926

Mr. Todarelli: I appreciate your Honor's indulgence, your Honor, but I should like to state that last night when I went over the record I found there were some questions which were not asked.

The Court: All right.

Mr. Todarelli: And unfortunately in order to lead up to these things I have to be somewhat repetitious, although I do not intend to be.

The Court: Go ahead.

Q. The statements that are contained in this exhibit, Miss Johnston, are statements that were put down by Mr. Trost after he talked with you some period of time, is that right?

927

Mr. Hilly: I object to that. That has been answered.

The Court: Yes, that has already appeared, Mr. Todarelli.

Mr. Todarelli: All right.

*E. Sorrentino, for Gov't, Cross.*

928

The Court: I think it has already appeared that she said most of the statements were false, isn't that right?

Mr. Hilly: That is my understanding.

Mr. Todarelli: That is precisely what I am going to question her about now, your Honor.

The Court: She has already stated they were mostly false.

Q. Were you asked how long you had known the defendant Kay? A. I don't know. I can't remember what was said there.

929

Q. You say you had known him for three years. All I want to know is weren't you asked that before he put it down? A. Yes.

Q. And that was true, wasn't it? A. Well, I had known him, that long.

Q. I say that was true, wasn't it? A. Yes.

Q. And weren't you asked whether or not you had given him any money? A. Yes.

Q. And you told Mr. Trost that you had not? A. That is right.

930

Q. And didn't you tell Mr. Trost before he wrote it down that you had gone down to Miami on the Champion? A. Yes, I said Betty and I went down there alone and bought our ticket.

Q. On the Champion? A. Yes.

Q. And you did go down on the Champion, didn't you?

Mr. Hilly: That is objected to.

A. But I can't remember the train.

Mr. Hilly: That is completely repetitious, your Honor.

*E. Sorrentino, for Gov't, Cross.*

The Court: Yes, that has already appeared many times. 931

Q. Did you tell Mr. Trost that when you got to Miami you gave some money to a fellow so that you could open

p? A. Yes, I did. Of course, I said that.

Q. Now, Mr. Trost asked you about that in some detail, didn't he? A. Yes, but I gave him any old things.

Q. I said he asked you about that in some detail, didn't he? A. I don't remember what he did ask me.

Q. Didn't he ask you for the name of the man to whom you paid this money? A. Yes, I think he did.

Q. And didn't he ask you where this place was? A. I said I didn't know. 932

Q. You said you didn't know? A. Yes.

Q. But I say he asked you it in some detail, did he not? A. Yes.

Q. How long, by the way, did you talk to Mr. Trost before he finally reduced this to writing? A. About what?

Mr. Hilly: I think that had been covered, too, your Honor.

The Court: Yes.

Q. Well; you did tell him that you ran this place at the El Chico Hotel, did you not? 933

Mr. Hilly: Objected to as having already been answered.

Mr. Todarelli: She has just stated a moment ago that she did not tell him the place and I want to see if that is quite so.

The Court: Read the question, please, Mr. Reporter.

(Question read.)

The Court: Did you, Mrs. Sorrentino?

*E. Sorrentino, for Gov't, Cross.*

934

The Witness: Yes, I did.

Mr. Todarelli: All right.

Q. Now, didn't you tell him that you were sick while you were working there, too sick to work?

Mr. Hilly: That has been answered.

Mr. Todarelli: I did not ask that.

The Court: Mr. Todarelli, are these statements in the exhibit?

Mr. Todarelli: Yes, your Honor, and I am asking—

935

The Court: It has already appeared that she gave all these statements to Mr. Trost, and that he wrote them down, and that she signed them. Why are you taking the time to repeat all these things?

Mr. Todarelli: I shall state my purpose.

The Court: All right.

Mr. Todarelli: I want to show that she talked to Mr. Trost for some period of time and told him all of these things which ultimately found their way into the statement.

The Court: That has already appeared.

936

Mr. Todarelli: Yes. Well, I want to show that there were not any threats of any kind made to her, and that he questioned her for some time before they were written down there.

The Court: You want to show that there were no threats on the part of Mr. Trost?

The Witness: I said no.

The Court: That has already appeared.

Mr. Todarelli: Not only that, your Honor.

Mr. Hilly: It has already appeared.

Mr. Todarelli: That not the main purpose.



*E. Sorrentino, for Gov't, Cross.*

Mr. Trost was primarily interested in getting the truth I would assume, and I think I have a right to ask this witness whether or not it is not a fact that this examination of her by Mr. Trost covered an extended period of time, that he went into detail with her, and that he questioned her and cross-questioned her in an effort to find out what she said was the truth of the matter. 937

The Court: Hasn't that already appeared?

Mr. Todarelli: She had generalized when she said most of the stuff that was in there was false.

The Court: Mr. Todarelli, I hope that I won't have to break up your cross examination, but if you persist in repeating things, I will have to. 938

Q. Didn't he question you about your illness down there?

Mr. Hilly: I object to that question, your Honor.

The Court: Just a minute.

Q. Before it was reduced to writing?

Mr. Hilly: I object to that question. It is in the statement, your Honor.

The Court: I know it is.

A. Yes, when I worked in this one house down there I was sick. I worked there for a few days, and I couldn't work any more. I was too sick to work, yes. 939

Q. Did he ask you before he wrote it down whether or not you had come back and paid your own fare to New York? A. Yes, he did.

Q. Mrs. Sorrentino, as you sit there on the stand today, can you think of anything that you told Mr. Trost that does not appear in this statement? A. Yes, and I put all the blame on myself.

*E. Sorrentino, for Gov't, Cross.*

940 Q. No, excuse me. Will you listen to my question, please? Did you tell Mr. Trost anything that is not contained in this statement? A. Did I what? I don't understand. I know the statement is false. There are just a couple of things. I took the blame myself, and with this girl, and I put it on myself, because at that time—

Q. Excuse me. A. I don't understand.

The Court: I will ask you the question, Mrs. Sorrentino: Is there anything that you told to Mr. Trost that is not in that statement? Do you remember anything that you told him that is not in the statement?

941

The Witness: No, I mean he just hurried it up, and that is all.

The Court: All right.

Q. You say he hurried it up? A. Yes.

Q. Now, isn't it a fact that you were with him most the entire day before he— A. Oh, no.

Q. No? A. No, I went to the post office that night, and I was there a half an hour, and he shot me right up to the sheriff's office in the jail, about a half an hour, that is all. He just wrote that down, and then he took me over in a car to the sheriff's up in the jail.

942

Q. And then no more questioning took place after that? A. No, no more questioning at all, until I went to Jacksonville, Florida, and they didn't even question me there, they just locked me up, and—

Q. Do I understand that from the time you got to the Post Office in Canandaigua until you signed the statement only about half an hour elapsed? A. No, because I was talking about my mother. I said, please, I told him, I said, I said, I didn't want my family to know anything about this. And things like that. If that is what you mean.

*E. Sorrentino, for Gov't, Cross.*

943

Q. Let me ask you this: Do I understand you to testify that between the time that you arrived at the Post Office in Canandaigua and the time when you finally— A. The Post Office is only a little ways from my house.

The Court: Wait a minute, Mrs. Sorrentino.

Q. Do I understand you to testify that from the moment you arrived at the Post Office in Canandaigua until you finally signed your name E. M. Johnston here, that that only took about a half-hour? A. I guess it was about that.

Q. About a half-hour? A. Uh huh.

944

Q. All right. Now, what did Mr. Trost say to you before he started talking to you about the facts of the case?

A. Well, he says, "Where is Alvin Kay?" I says, "I don't know."

"Where is Pauline Hillson?" I think that is the name, or Betty or something. I forget now. I said, "I don't know."

He says, "Well, where are they?" He kept asking me. I said, "I don't know."

"Where is their address?" I said, "I don't know." So I kept saying "I don't know." Finally I said—he said, "You know you are—you got a charge against you." So

he says—I can't remember everything he said. But I know, I thought I was doing something good I suppose when I said all those things in there, to protect him. I don't know. 945

Q. Did he tell you what the charge against you was? A. Yes. He says conspiracy for immoral purposes.

Q. Conspiracy. Now, did he say to you that "Now is the time for you to come clean and tell the truth and nothing will happen to you"? A. No, I don't remember him telling—

Q. Didn't he say to you to come clean? A. I was too mad and too nervous and everything else. I was like a

*E. Sorrentino, for Gov't, Cross.*

946 rabbit sitting there. And I didn't have too much to say to anything. He said, "Just give me your life story" or something like that; or he says, "Tell me what happened." Well, there it is, anyway. And, I can't remember every little word he said, that is all.

Q. Didn't he tell you to come clean and tell the truth and nothing would happen to you?

Mr. Hilly: Objected to. That is the second time—

The Court: She may answer that question.

A. I don't remember him saying. He didn't say, "Come clean", or anything like that.

947 Q. Well, words in effect or substance. I don't mean in those words necessarily. A. He didn't say he would help me, he didn't say anything. He says, "Now I want you to answer my questions." And, he says, "Now, when did you start doing this", and this and that, and he wrote it down. That is my answer to it. Because I can't tell you any more because I don't know.

Q. When he got all through didn't he say, "Now, Mrs. Sorrentino, read this over very carefully"? A. Well, I suppose he did.

948 Q. Didn't he say, "Now, Mrs. Sorrentino, you know that you are signing this of your own free will, don't you, Mrs. Sorrentino?" A. Yes, he did. He told me that.

Q. He did, didn't he? And then didn't he say, "Now, if there is anything in there that is not true tell me about that"; didn't he at that time? A. No, the man didn't say anything like that.

Q. Well, didn't he say, just before he asked you to sign it— A. He said, "Is this the truth?" I says, "Yes." That was all there was to it. He says, "Put your initials on each page and then sign your name", I don't know, some other place on there, and that was all.

*E. Sorrentino, for Gov't, Cross.*

Q. And then you were taken where? A. To the sheriff's office. 949

Q. And from there? A. There to Rochester.

Mr. Todarelli: I would like to pursue a new tack and it will only take a short time this afternoon and then I will be through, your Honor.

The Court: All right. We will recess until 2:15.

(Recess to 2:15 p. m.)

Afternoon session.

ELIZABETH SORRENTINO, resumed.

950

Mr. Todarelli: Will your Honor forgive me if I am repetitious? I don't think I am—

The Court: Go ahead.

Mr. Todarelli: —but I just want to ask one question.

Cross Examination continued by Mr. Todarelli:

Q. Mrs. Sorrentino, did you testify on direct examination that the tickets that were used to go to Florida on October 25th were purchased by Kay the day before you left? A. Well, I guess I did. They were purchased by him. They were purchased that day or the day following. I know he purchased them, but I don't know— 951

Q. I mean, you went down to the Pennsylvania Station with him, didn't you? A. Well, when we checked the baggage we got on the train.

Q. And you bought the tickets the day before you actually left, is that right? A. I think I did. I am not sure, though, what time we bought them. It was one of those two days.



*E. Sorrentino, for Gov't, Cross.*

952

Mr. Todarelli: Well, your Honor, this morning I asked Mr. Hilly through your Honor whether or not he had a statement that this witness had made at the time of the intimidation charge. Mr. Hilly said he would look during the noon recess.

Mr. Hilly: I have looked, if your Honor pleases, and I am not able to locate any statement that was made to the FBI.

953

Now, I just have here a statement that came out of the file. It is a question and answer statement taken in September from this witness, but I do not know whether that is the statement that Mr. Todarelli has reference to or not. There are two portions to it; one taken on September 3rd and one taken on September 10th.

The Court: What year, Mr. Hilly?

Mr. Hilly: 1943.

954

Mr. Todarelli: No, the ones I have reference to were taken presumably—in fact, I am sure if they were taken, they were taken before the first trial which took place before Judge Clancy in July, 1943. I think the witness testified, and I think it is the fact, that Kay was arrested on that intimidation charge before the first trial.

Mr. Pinto: In May.

Mr. Todarelli: In May of 1943.

Mr. Hilly: Then I have no statement in the file, your Honor,—

The Court: Very well.

Mr. Hilly: —that was taken at that time. I am unable to locate one if one was taken from the FBI. It is my best recollection after looking through the

*E. Sorrentino, for Gov't, Re-direct.*

file that no such statement was taken in the form 955  
that it was written or signed, or anything of that  
sort. Now, I will make a further check and if it  
develops that I am wrong I will advise Mr. Todarelli  
and your Honor.

The Court: All right.

Mr. Hilly: But I had only a limited period to  
look for it today, but after court this afternoon I will  
make a thorough search, your Honor.

The Court: All right.

Mr. Todarelli: I have no further questions, your  
Honor. 956

Mr. Hilly: Mr. Reporter, will you please read the  
last question and answer.

(Last question and answer read.)

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Did you buy the tickets or did Kay buy the tickets?

A. Kay bought the tickets.

Q. And when you say you went down there the day be-  
fore you left, was that for the purpose of buying the tickets  
or was that for the purpose of checking the baggage? A.  
Checking the baggage.

Q. And as to when those tickets were bought in you  
don't know? A. No. 957

Q. Looking at Defendant's Exhibit C, Mrs. Sorrentino,  
do you recall when you wrote that? A. Yes. I remember,  
now that I was thinking about it, and I wrote that at his  
request, and it was after it was wrote in New York City.  
Yes, it was. With the other two letters.

Q. It was written at the same time as you wrote the  
other two letters? A. Yes, it was.

Q. In New York City? A. That is right.

*E. Sorrentino, for Gov't, Re-direct.*

958 Q. It was not written in Miami, Florida? A. No, it was not.

Q. Now with respect to Defendant's Exhibit B in evidence, do you recall that on the day you went to Florida you had the dog with you; is that right? A. Yes.

Q. And you had it in the coaches with you for a period of time, is that right?

Mr. Todarelli: Now, your Honor, I object to this as leading.

The Court: Yes. The question is leading.

Mr. Hilly: It is, your Honor. I agree.

959 Q. Do you recall when, looking at Defendant's Exhibit B, the dog was checked? A. I don't quite remember when the dog was checked, but I know the conductor said that we had to check the dog, it was a rule or regulation. And we put him in the baggage coach.

Q. And up to the time you checked the dog you had it with you? A. Yes, we did.

Q. Did you have the dog with you when you boarded the train in New York? A. Uh huh.

960 Q. At the time the dog was checked were you on the train? A. No. I am not quite sure about that because the conductor came over to us, and I can't remember if it was at a stopping place or what it was, but I know he gave us, told us that we can't—we had that satchel with the holes in it, see, and he said no. We even had a muzzle, but he said it was no good.

Q. Now, when you met Alvin Kay did you tell him about your past record, or was it later that you told him about it? A. After, well, he knew what I was when I met him because I told him I was—

*E. Sorrentino; for Gov't, Re-direct.*

Mr. Todarelli: I object to that, your Honor, and move that the answer be stricken out.

961

The Court: The answer may stand. Go ahead.

A. (Continuing) I told him that I was a racket girl when I met him, and he told me about Betty being in the business, too, and so on and so forth.

Q. And it was at that time that you told him about your record? A. Well, no, I didn't tell him about my Bedford record or anything like that until once that we were arrested but, you know, dismissed, found not guilty, once with him. And so, then, I got scared and I told Betty, you see, I told her, "Betty, gee, I violated parole from Westfield." So, she had been there, too. So she says, "Well, if they don't take your fingerprints you are all right." Well, naturally, us girls were not found guilty so they didn't take our fingerprints, and we were dismissed.

962

And the next time, then I was—then he knew about that, after he knew I was from Bedford then. And then we were arrested again, and this time I told him; I says, you know, I says to him, "Al, I am going back to Bedford, I have got an awful feeling this time because it is a bad case against us." He says, "What do you want to do, jump your bail?" And he made me feel very bad that night about it. And I says, "No, I will go right on with the case."

963

So he got a lawyer and so on, and we had been out on bail, and the judge—it was in front of this woman judge, Brill, Jeanette Brill, and she found us guilty. And being that I had no fingerprints in the House of Detention she held me for investigation, and therefore found out I had violated parole from Bedford.

Q. Then you went back to Bedford? A. Then I went back

*E. Sorrentino, for Gov't, Re-cross.*

964

Mr. Hilly: If your Honor pleases, at this time I have no further questions of the witness.

Mr. Todarelli: Just one question, please.

RE-CROSS EXAMINATION by Mr. Todarelli:

Q: Did you tell Mr. Hilly on direct examination that the day before you left for Florida in '41 that you went down to Pennsylvania Station only for the purpose of checking baggage; is that right? A. Yes, we did check baggage.

Q. And that you didn't buy any tickets then? A. He bought the tickets. I don't think he bought the tickets then.

965

Q. I know. But didn't you tell Mr. Hilly that Kay didn't buy the tickets the night before you left? A. I don't know. I am not sure if I told him that or not.

Q. Well, what is the fact? Did Kay buy any tickets the day before? A. I am sure he did.

Q. Sure what? A. I am sure he bought the tickets that night—that day we went to check the baggage, took all the baggage down there.

Q. That was the day before you left for Florida? A. Yes, it was.

Q. All right.

966

Mr. Todarelli: My associates tell me that Mrs. Sorrentino—I didn't hear her, frankly—testified that she wrote Exhibit C in New York. Is that right, Mr. Hilly?

Mr. Hilly: You mean, just in response to my questions now?

Mr. Todarelli: Yes.

Mr. Hilly: Yes.

Q. You testify that Exhibit C was written from New York? A. Yes, I remember the other two letters now. He needed them.



*E. Sorrentino, for Gov't, Re-cross.*

Q. Pardon me? A. Yes, that is right. Because if I had sent a note he would have got it. 967

Q. What was that again? A. If I had sent that note in Miami to Harold he would have gotten the note.

Q. Didn't you testify on your cross examination— A. Because I didn't remember, because I didn't remember; but I do remember now very clearly that I wrote that note with those two letters that he asked me to write for him to put in the envelopes that the FBI gave him back.

Q. Do you remember testifying in this case, in this court, in this room, before this Court and jury— A. Yes, but I am sorry I made the mistake. 968

Q. On April 15th? A. I am sorry I made that mistake because I was thinking it over, and I remember those two letters.

Q. You mean to say that when you told us that you wrote this in— A. I am not lying about anything, so get that out of your head.

The Court: Wait.

The Witness: He makes me so nervous.

The Court: Let the question be answered, then you answer it as best you can.

Q. Were you asked this question, page 162 in the present trial: 969

Q. Well, didn't he tell you to tell Harold to leave you alone because you were married to him, Alvin Kay?

A. I don't remember what the words were, because he was mad because of Harold being there. He didn't want Harold around.

Q. Well, didn't you testify before Judge Porterie— And then Mr. Todarelli says: "Page 234." And then the answer: "Yes, he called up. I don't know if I called up or

*E. Sorrentino, for Gov't, Re-cross.*

970 had to write him a note of some kind saying I didn't want to see him any more, or stuff like that."

Do you remember being asked those questions? A. Yes.

Q. Did you give those answers? A. That is right.

Q. Were you nervous when I asked those questions? A. Sure. I have been nervous all through the whole darn thing.

Q. Are you nervous now? A. Yes, I am.

Q. Is it because of nervousness that you don't remember certain things? A. No. I am not feeling too good today.

Q. But you do remember definitely that you wrote this note in New York? A. Yes, I do remember now, with the other two letters.

971

Q. You don't deny having an affair with Harold, do you? A. No, I don't.

Q. And that was in Florida, was it not?

Mr. Hilly: Objected to as having already been answered, if your Honor please.

The Court: Yes, that has appeared already. Mr. Todarelli.

Mr. Todarelli: That is all.

Mr. Hilly: I have no further questions. Thank you very much.

972

Mr. Todarelli: Will you Honor be good enough to instruct this witness to stay here in case we need her for some reason?

Mr. Hilly: If your Honor pleases, I have no objection to that request, but if Mr. Todarelli thinks he might need the witness I will get her on notice, but I do not think it is necessary that she should remain around here.

The Court: No, it is not necessary. If you want her she can be obtained.

*J. Dolan, for Gov't Direct.*

Mr. Todarelli: Well, frankly, I do not anticipate needing her for examination, but— 943

The Court: I think the cross examination has been very thorough and I can't think of anything more that you could question her about, and, as you say you do not anticipate asking her anything further, and I do not see why you should need her any more.

Mr. Todarelli: If your Honor please—

The Court: In addition to that you yourself say that you can't think of anything that you might want to ask her in the future, but you still want her to stay around just the same. 974

Mr. Todarelli: Your Honor, I say that the only purpose that I can imagine now that I would need her here for would be for the purpose of having some witness identify her. That is all. I can't think of anything I want to ask this witness further, but that is the only reason that I can suggest.

The Court: Well, then, that can be arranged.

Mr. Todarelli: All right, sir. That is all I wanted.

~~The Court:~~ You are excused, Mrs. Sorrentino.

(Witness excused.)

975

JOHN DOLAN, called as a witness on behalf of the Government, being first duly sworn testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Dolan, in January, 1941, were you employed, or did you obtain employment as a doorman at an apartment house located at 325 East 77th Street, New York City?

A. I did.

*J. Dolan, for Gov't, Direct.*

976 Q. And was there a tenant in that apartment house by the name of Alvin Kay? A. Yes, sir.

Q. Do you see him in court, Mr. Dolan? A. Yes, sir.

Q. And where do you see him, sir? A. Right here, (indicating).

Mr. Todarelli: I will concede he identifies the defendant, Mr. Hilly:

Mr. Hilly: Identification is conceded.

Q. Was Kay occupying that apartment at the time you went to work there? A. Yes, sir.

Q. Was there anyone else with him at that time? A. Yes, sir.

Q. Whom else was with him? A. I only know her by the name of Betty.

Q. I show you Government's Exhibit 1 in evidence and ask you if that is the picture of the woman you know by the name of Betty? A. Yes, sir.

Q. Now, after you went to work, or sometime thereafter, did anyone else come to live at that apartment? A. Yes, sir.

Q. Who else came to live there? A. A girl named Joyce.

978 Q. And when was the last time that you saw Joyce? A. Recently? I just seen her now.

Q. You just saw her as she came out of the courtroom? A. Yes, sir.

Mr. Hilly: This picture that the witness has identified is a picture of Rose Sookerman.

Q. Now, in October of 1941, were you still employed at 325 East 77th Street? A. Yes, sir.

Q. After Joyce came to live at 325 East 77th Street, did the girl who is represented by Government's Exhibit 1

*J. Dolan, for Gov't, Direct.*

in evidence, the girl you identified as Betty, continue to live there? A. Yes, sir. 979

Q. Now, in October of 1941, did you have a conversation with all three of the occupants of the apartment 1-J as to what they were going to do on that particular day? Did you have a conversation? A. No, sir.

Q. Did you have a conversation with any one of the occupants of apartment 1-J as to where they might be going? A. Yes, sir.

Q. Whom did you have the conversation with? A. Joyce.

Q. And who was present at the time you had the conversation? A. All three, sir. 980

Q. And by "all three" you mean Betty— A. That is right.

Q. —Joyce, and Alvin Kay, is that correct? A. Yes, sir. They were on their way out the door.

Q. Pardon me? A. They were on their way out the door.

Q. And do you recall the time of day that this conversation took place? A. About 9 o'clock in the morning, 10 o'clock in the morning, I believe.

Q. Will you tell us what the conversation was? A. Joyce told me she was going to Florida. 981

Q. And where did this conversation take place? A. Well, in—I suppose you would call it the vestibule. There is a little vestibule separating the lobby and the outside door, and they were on their way out, and Mr. Kay and Betty were going out the door, and Joyce stopped and told me she was going to Florida.

Q. After this conversation, did you see what they did? A. Yes, sir, they got into a car.



*J. Dolan, for Gov't, Cross.*

982 Q. And where did they go? A. They drove off.

Q. Now, after this conversation did you see Joyce again? A. No, sir, not for some time.

Q. Did you see Betty again? A. No, sir, not for some time.

Q. And with respect to Alvin Kay, when did you see him again? A. I did see him a few days later.

Q. Now, in December of 1941, did you have a conversation with Kay with respect to Betty and Joyce? A. Yes, sir.

983 Q. And where did this conversation take place? A. Out on the street, on the front steps.

Q. And what was the conversation? A. He told me one of the girls went north and one of the girls went south.

Q. Did he tell you which girl went north and which girl went south? A. No, sir, he didn't make no distinction.

Q. Now, was mail received for apartment 1-J? A. Yes, sir.

Q. And did you handle the mail? A. No, sir.

Q. Did you see the mail? A. Only in one instance, sir, a summons came to the house for somebody by the name of Hillson and Mr. Kay told me to return it to the mailman.

984 Mr. Hilly: If your Honor will bear with me for just a minute, please.

Q. I see you testified that the apartment they testified was 1-J, is that correct? A. Yes, sir.

Mr. Hilly: I now have no further questions.

**CROSS EXAMINATION by Mr. Todarelli:**

Q. Do I understand you to say, Mr. Dolan, that the conversation of which you speak with the three of them took place in the morning? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

*J. Dolan, for Gov't, Cross.*

Q. Your memory of these facts was better, was it not, 985  
in 1943, than it is today? A. It would be, sir.

Q. Didn't you testify at the first trial before Judge  
Glancy in this case? A. Yes, sir.

Q. Were you asked these questions and did you give  
these answers— A. I believe so.

Q. Page 134. "Q. Do you remember about what time  
of day it was Joyce spoke to you in October? A. Yes, I  
can say it was in the afternoon." Were you asked that  
question and did you make that answer? A. I suppose so,  
sir, if it is down there.

Q. Doesn't that refresh your recollection that the con- 986  
versation about which you have testified took place in the  
afternoon and not in the morning? A. No, sir, I wouldn't  
say for sure.

Q. Well, didn't you say for sure on direct examination  
that it took place in the morning? A. I said approxi-  
mately. I didn't say nothing for sure.

Q. Didn't you say it took place in the morning? A. I  
said right now, I said about 9 or 10 o'clock in the morn-  
ing, yes.

Q. Now, that would not be in the afternoon, would it?  
A. No, sir.

Q. Now, don't you remember now after I have read 987  
you this question and this answer that the fact is that  
your conversation took place in the afternoon? A. It is  
quite some time ago.

Q. Don't you remember now that it took place in the  
afternoon? A. I can't say for sure.

Q. Were you asked these questions and did you give  
these answers at the first trial?

Mr. Todarelli: Page 136.

*J. Dolan, for Gov't, Re-direct, Re-cross.*

988 Q. (Continued) "Q. What was the weather? A. And October is the rainy season and we had people coming in and out.

"Q. Do you remember what the weather was that day? A. It was a bad day.

"Q. It was in the afternoon? A. It was sometime in the afternoon."

Were you asked those questions and did you give those answers? A. Yes, sir.

Q. Does that further refresh your recollection that the time that this conversation took place— A. No, sir.

989 Q. —was in the afternoon and not in the morning? A. I can't say for sure.

Mr. Todarelli: That is all.

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Were you asked this question and did you make this answer in the first trial before Judge Clancy—

Mr. Hilly: And I read from page 137 of the record, the next question.

Q. (Continuing): "Q. Could you place it between the hours of 2 and 5? A. I cannot place the hours.

990 "Q. Might it have been earlier? A. It is some time ago that it happened, you know, and it's quite hard to place the hours of the time of day."

Do you remember making that answer? A. Yes.

RE-CROSS EXAMINATION by Mr. Todarelli:

Q. Well, in view of those answers that you gave four years ago, are you able now to state that that conversation took place in the morning? A. The conversation I early remembered, and I was wrong—

Q. No. Are you able to state now that it took place in

*P. Csarba, for Gov't, Direct.*

the morning? A. No, I still can't say for sure what time 991  
of day it took place.

Q. Then the fact is you do not know whether it took  
place in the morning, in the afternoon, or evening, isn't  
that right? A. Well, I know it wasn't in the evening. In  
the evening in October it is dark.

Q. Then you don't know whether it took place in the  
afternoon or morning, do you? A. No. I can't say for  
sure.

Mr. Todarelli: All right, that is all.

Mr. Hilly: Thank you, Mr. Dolan, I have no fur-  
ther questions. 992

(Witness excused.)

Mr. Hilly: Paul Csarba.

PAUL CSARBA, called as a witness on behalf of the  
Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Csarba,— A. Yes, sir.

Q. —were you formerly the superintendent of an  
apartment building at 515— A. Yes, sir. 993

Q. —West 156th Street? A. Yes, sir.

Q. And when were you the superintendent of that build-  
ing, Mr. Csarba? A. I was there six years, five years be-  
fore it happened that time.

Mr. Todarelli: I move that that be stricken out,  
your Honor.

The Court: Well, yes, it may be stricken.

Q. Were you the superintendent in June of 1939? A.  
Yes, sir.

*P. Csarba, for Gov't, Direct.*

994 Q. And was there a tenant at 515 West 156th Street named Bert Lewis? A. Yes, they were in Apartment 32 I guess, yes.

Q. Do you see Bert Lewis in the courtroom, Mr. Csarba? Do you wear glasses, sir? A. Yes, I wear glasses.

Q. Will you put them on and see if you see Mr. Lewis in the courtroom? A. I got my glasses but only for reading.

Q. Do you see Mr. Lewis in the courtroom? A. Yes, it looks like that fellow there (indicating).

Q. Which man? A. At the right side.

995 Q. Would you come down and point the man out to us, please?

(Witness leaves witness stand.)

Q. Which man is that? A. On the outside there.

Q. Will you place your hand on the shoulder of the man that you say is Mr. Lewis, Mr. Csarba? A. (Witness does as requested.)

(Witness resumes witness stand.)

Q. Now did you rent Apartment 32 to Bert Lewis? A. Yes.

996 Q. I show you this piece of paper and ask you if you can tell me what that is? A. What that is?

Q. Does that bear your signature? A. Yes, that is mine, yes.

Q. Were you present when that paper was filled out? A. Yes, certainly.

Q. Who filled the paper out? A. Himself.

Q. By "himself", whom do you mean, Mr. Csarba? A. Lewis.

Q. Does it bear his signature? A. Yes. It must be because—



*P. Csarba, for Gov't, Direct.*

Q. That signature there was put on in your presence? 997

A. Yes. And—

Q. Now, thereafter was this lease executed? A. Yes.

Q. Does that bear your signature? A. Yes, my signature, yes.

Q. It bears— A. But that ain't the signature here (indicating). It is mine.

Q. That is your signature there? A. Yes.

Mr. Hilly: I will offer these in evidence, Mr. Todarelli (handing).

Mr. Todarelli: No objection.

The Court: It may be received and marked as an exhibit. 998

(Marked Government's Exhibits 11-A and 11-B.)

Mr. Hilly: With your Honor's permission I would just like to read certain portions of it.

(Mr. Hilly read from Government's Exhibits 11-A and 11-B to the jury.)

Q. Did Mr. Lewis tell you who Ben Gordon was? A. Ben Gordon?

Q. Did he tell you who Ben Gordon was? Did he tell you who B. K. was, Mr. Csarba? A. I can't remember on that what he said. 999

Q. Now, did Mr. Lewis occupy this apartment? A. Yes.

Q. Was there anyone else that occupied the apartment with him? A. A girl. I mean as a wife and a husband, they took the apartment. You see, they were together.

Q. How long were they there, Mr. Csarba? A. Two months. They took the apartment before but they just were there two months.

*J. Martyn, for Gov't. Direct.*

1000

Mr. Hilly: I have no further questions of this witness at this time.

Mr. Todarelli: No questions.

Mr. Hilly: John Martyn. Thank you very much.  
Mr. Csarba.

(Witness excused.)

JOHN MARTYN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

1001

Q. Mr. Martyn, were you formerly superintendent of an apartment house located at 610 West 174th Street? A. Right.

Q. Did you have a tenant there named Ben Gordon? A. Right.

Q. Will you see if you see Mr. Gordon in the courtroom. Mr. Martyn? A. I think he sits there (indicating).

Q. Which man is it? A. Right on the end.

Q. Pardon me? A. Right on the right end.

Mr. Hilly: On the right end. Do you concede that he is identifying the defendant Kay, Mr. Todarelli?

1002

Mr. Todarelli: I do.

Q. Have you got your glasses with you? A. I think so.

Q. Will you look at that paper, Mr. Martyn? A. Yes.

Q. Does that bear your signature? A. That is perfect. That is mine signature, yes.

Q. Did Mr. Gordon sign that paper? A. Yes, sir.

Q. Is that his signature there? A. That is right, when he give the deposit.

*J. Martyn, for Gov't, Direct.*

Q. And the rest of the pencil notations that appear here, are they in your handwriting? A. No, that is his. 1003  
Only I make the address 610 West 174th Street you see and October 10, 1939, Apartment 1-A, first floor.

Q. So you wrote— A. Up to here (indicating).

Q. You wrote what the premises were? A. Yes.

Q. The apartment number, the floor and the date? A. That is right.

Q. And your signature here? A. That is right.

Q. And the rest of the writing that appears there? A. That is Mr. Gordon's.

Mr. Hilly: I will offer that in evidence, Mr. 1004  
Todarelli.

There is no objection to the receipt of this in evidence, your Honor.

The Court: Mark it as an exhibit.

(Marked Government's Exhibit 12.)

Mr. Hilly: With your Honor's permission I would just like to read this..

I am now reading, ladies and gentlemen of the jury, from Government's Exhibit 12 in evidence. Premises 610 West 174th Street, October 10, 1939, Apartment 1-A, floor 1. 1005

Q. That appears in your handwriting? A. Right.

(Mr. Hilly continued reading from Government's Exhibit 12.)

Q. Now, did Mr. Gordon move into that apartment, Mr. Martyn? A. Yes, sir.

Q. Was there anyone with him at the time he moved

A. Two womens.

Q. Do you know their names? A. No.

Q. Did you learn their names? A. No.

*J. Martyn, for Gov't, Direct.*

1006

Q. Now, look at Government's Exhibit 1 in evidence, Mr. Martyn. I ask you if this is a picture of one of the woman that moved in with him? A. That is right. I believe that was Mrs. Gordon.

Q. You believe this was Mrs. Gordon? A. Right.

Mr. Hilly: Identifying the picture of the defendant Betty or Rose Sookerman.

Q. Did you know the name, the first name of the other woman? A. No.

Q. Have you seen her recently? A. Yes.

Q. When did you see her? A. When they came looking for apartment and after when they moved in.

1007

Q. No. But let me ask you this question, Mr. Martyn. When was the last time that you saw her? A. When they was living there in the house.

Q. Let me ask you this. Did you see her today? A. Today?

Q. Yes. A. Yes.

Q. Where did you see her today? A. In the other room.

1008

Mr. Hilly: Mr. Todarelli—it won't be necessary then, your Honor; Mr. Todarelli will concede that when he refers to "I saw her in the witness room" he means the witness Mrs. Sorrentino; is that correct, Mr. Todarelli?

Mr. Todarelli: Right.

Q. This woman that you saw in the witness room, was she in the apartment all the time or did she leave? A. She leave shortly, about—I cannot remember how many weeks, say, but after she was not in the house.

Q. Did Mr. Gordon continue to occupy the apartment

*H. Stein, for Gov't. Direct.*

Q. Did he leave? A. No. He break the lease. He moved out.

1009

Q. Did he tell you where he was going? A. No.

Q. Do you know where he went? A. Yes.

Q. How do you know where he went? A. I followed, in a car, the truck. And I come to East Side, I believe it is 78th or 74th Street, to new building there. Then I notified mine boss where he living. Because he leave the balance of the rent unpaid—

Mr. Todarelli: I object. I move that the answer be stricken out.

The Court: The last part of it may be stricken out.

1010

Mr. Hilly: I consent to that, your Honor.

Mr. Todarelli: Yes, the last part.

Mr. Hilly: I have no further questions of this witness at this time.

Mr. Todarelli: No questions.

Mr. Hilly: Thank you, Mr. Martyn.

(Witness excused.)

UNITED STATES OF AMERICA,

vs.

ALVIN KRULEWITCH.

1011

New York, April 17, 1947, p.-m.

HARRY STEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Stein, were you in charge of an apartment building located at 605 West 170th Street? A. That is right.



*H. Stein, for Gov't, Direct.*

1912

Q. Were you also in charge of a building located at 620 West 171st Street? A. Yes, sir.

Q. Are you still in charge of those buildings? A. Yes, sir.

Q. How long have you been in charge of those buildings? A. It is going on 18 years.

Q. In September or October of 1940 did you rent an apartment in one of the buildings? A. Yes, sir.

Q. What building did you rent the apartment in? A. 620 West 171st Street. My assistant rented the apartment, and he has to bring them over to me to sign up.

1013

Q. What was your assistant's name? A. John Shagg.

Q. Do you know where Mr. Shagg is now? A. He died last June.

Q. Did Mr. Shagg bring a man over to you? A. Yes, sir.

Q. Was there anyone else with the man? A. Yes, sir. A lady.

Q. Did you learn this man's name? A. Well, yes, I know his name.

Q. What was his name? A. Mr. Krulewitch was—

Q. Pardon me? A. Alvin Krulewitch I think it was.

1014

Q. Was he introduced to you under that name? A. Yes, sir.

Q. Do you see him in court? A. Yes, sir.

Q. Where do you see him? A. He is over there, at the end.

Mr. Todarelli: It is conceded, the identification.

Q. Did you learn the name of the woman that was with him? A. No.

Q. Will you look at Government's Exhibit 1 in evidence, and I ask you if that is a picture of the woman that was with him? A. That is right.

*H. Stein, for Gov't; Direct.*

Mr. Hilly: Identifying a picture of the defendant Rose Sookerman. 1015

Q. Was the lease for the apartment signed? A. It was signed, otherwise they couldn't have got the apartment.

Q. Who signed the lease for the apartment? A. Mr.

Mr. Todarelli: I object, unless he knows, your Honor.

Q. Do you know who signed the lease? A. Yes.

Q. Was it signed in your presence? A. Yes, sir.

Q. Who signed it? A. Mr. Krulewitch over there.

Q. Let me ask you, did you know him by Krulewitch or was it some other name that you knew him by? A. Well, I think it was signed—I don't remember any more. That I don't remember. 1016

Q. When you say you were introduced to him by the name of Krulewitch, was it Krulewitch or was it some other name? A. I think it was he who signed, but I am not positive whether it was signed under that name.

Q. Did you receive any money for the rent? A. Yes. We got a deposit.

Q. Who gave you the deposit? A. He did.

Q. Do you recall how long the apartment was occupied?

A. I think it was about two or three weeks. And then my assistant came over to me— 1017

Q. Don't tell us what your assistant said. It was about two or three weeks? A. About two or three weeks.

Mr. Hilly: I have no further questions.

Mr. Todarelli: No questions.

The Court: That is all, thank you.

(Witness excused.)

Mr. Hilly: If your Honor pleases, before the next witness, I would like to approach the bench with Mr. Todarelli.

*M. Krankewicz, for Gov't, Direct.*

1018

(Conference at the bench, between Court and counsel, off the record.)

The Court: We will take our afternoon recess now.

(Short recess.)

**MILDRED KRANKEWICZ**, called as a witness, on behalf of the Government, being first duly sworn, testified as follows:

1019

Mr. Todarelli: May we approach the bench, your Honor?

The Court: Yes.

Mr. Todarelli: Mr. Reporter, may we have you too, please.

(The following proceedings took place at the bench without the hearing of the jury):

1020

Mr. Todarelli: If your Honor please, I hold in my hand a letterhead of Associated Advertising Co., Inc. bearing five names and addresses and phone numbers, and this is a paper seized from the defendant on December 6, 1941 and one of the documents which your Honor suppressed. One of the names is Mildred O'Brein O'B-r-e-i-n, Krankewicz, K-r-a-n-k-o-w-i-c-z, with her address. And I respectfully object to any testimony from this witness on the ground that she was located through this paper, and that any evidence she will give is the fruit of illegal search and seizure, which your Honor has so declared.

Mr. Hilly: If your Honor please, there is only one answer that I make to that. This witness, who is

*M. Krulewicz, for Gov't, Direct.*

now testifying on this witness stand, testified in 1021  
 behalf of the defendant in the first trial of this case,  
 testified completely for the defendant in the first  
 trial of this case, your Honor. This sheet of paper  
 which Mr. Todarelli says her name is on, we con-  
 cede that was seized at the time of the raid. And  
 her testimony today on this witness stand is merely  
 that when she testified the first time she testified  
 falsely and she testified falsely at the instigation of  
 the defendant Krulewitch in the first trial. She has  
 so testified at the so-called second trial of this case.

So, we never got her from that paper, we got her 1022  
 after she testified in the first trial, your Honor.

The Court: What do you say to that, Mr. Todar-  
 elli? You mean that her testimony today is simply  
 to the effect that when she testified the first time  
 she testified falsely?

Mr. Hilly. Yes, your Honor.

The Court: And that is all you are going to show  
 by her?

Mr. Hilly: That is about all that will be shown  
 by this witness, your Honor. It is a rather detailed  
 proposition. Because we are going—I am going 1023  
 to have her testify further, that before the second  
 trial, before the third trial she was taken by the  
 defendant's wife down to Mr. Todarelli's office at  
 that time—

Mr. Todarelli: That is right.

Mr. Hilly; —and they attempted to have her go  
 back to the testimony she gave at the previous trial.

Mr. Todarelli: Who is "they"?

Mr. Hilly: Krulewitch and Baker.

*M. Krankewicz, for Gov't, Direct.*

1024

Mr. Todarelli: Not Mr. Todarelli.

Mr. Hilly: Oh, no, Mr. Todarelli.

The Court: Well, in view of the fact that this witness testified for the defendant at the first trial and she is now going to testify that her testimony on that trial was false, I think I will permit her to testify.

DIRECT EXAMINATION by Mr. Hilly:

Q. Mrs. Krankewicz, do you know a man by the name of Alvin Kay? A. Yes.

1025

Q. Just keep your voice up, please. A. Yes.

Q. Did you work for Alvin Kay? A. Yes.

Q. And where did you work for him? A. The Royal Cider Stube.

Q. And where is the Royal Cider Stube located? A. Between 83rd and 84th. It was ~~on~~ 83rd and 84th on Second Avenue.

Q. And how long a period of time did you work for him? A. One month.

Q. And during the time that you worked for him did anyone else work there? A. Joyce.

1026

Q. Joyce? A. She came in the place just once or twice.

Q. Did you see a woman by the name of Rose come in and out of the place where you worked or during the period of time that you worked there? A. I don't know her by the name.

Q. Did you know her by the name of Pauline? A. (No answer.)

Q. Let me show you Government's Exhibit 1 in evidence and ask you if you ever saw this girl? A. That is Betty.

Q. You know her by the name of Betty? A. Yes.



*M. Krankiewicz, for Gov't, Direct.*

Q. Did you see her at the Royal Cider Stube? A. She came in once or twice, that is all.

1027

Mr. Hilly: Mr. Todarelli will concede, if your Honor pleases, that when this witness mentions the name Joyce she is referring to Mrs. Sorrentino.

The Court: All right.

Q. Now, let me direct your attention to the month of June and the year 1943; at that time did you have a conversation with Alvin Kay? A. I met—I met Alvin Kay up at 56th Street and Second Avenue in the restaurant and I spoke to him. I asked him how things were in his place and he told me he had a little trouble with Joyce, and he asked me, "Would you want to go there?" And I said, "Is there anything I can do?" He said, "Do you want to go on the trial?"

1028

I said, "Yes; I will go on the case if you want me to", and I came down on the case.

Q. Well, before you came down on the case did you receive anything from Alvin Kay? A. Well, we went over the case and we had spoken about the case, and Al had took me to a lawyer about a statement, and I was supposed to read the papers, and he said that the answers to the questions will be on that paper, and I signed that paper, which was supposed to be the statement which was put to me on the stand.

1029

Q. I show you this sheet of paper and ask you if you received that from Alvin Kay? A. Yes.

Q. Pardon me? A. Yes, that is the paper I had signed.

Q. Pardon me? A. That is the copy of the paper that I had signed.

Q. That is the copy of the paper you had signed? A. Yes.

*M. Krankewicz, for Gov't, Direct*

1030

Q. And that is in whose handwriting? A. I don't know in whose handwriting it was. It was just given to me. I don't know who wrote it.

Q. Who gave it to you? A. Mr. Kay.

Mr. Hilly: I will offer this in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It may be received and marked as an exhibit.

(Marked Government's Exhibit 13.)

1031

Mr. Hilly: I do not know whether this witness has identified Alvin Kay.

Q. Do you see Alvin Kay in the courtroom? A. Yes, over there (indicating).

Mr. Todarelli: We will concede the identification.

Mr. Hilly: The identification is conceded. Now I am reading, if your Honor pleases, from Government's Exhibit 13 in evidence.

Q. This reads as follows, Mrs. Krankewicz: "I worked with Joyce in July of 1941." Is that statement true or false? A. I guess that is when I worked with her, yes.

1032

Q. That is true? A. Yes, sir.

Q. "I worked one month." Is that true or false? A. Yes, sir.

Q. What is it, true? A. Yes, sir.

Q. "Joyce came in about two or three nights a week." Is that true? A. Yes, sir.

Q. "I knew Joyce as Mrs. Kay." Is that true? A. Yes, sir.

Q. "I saw her again at 77th Street, First Avenue, restaurant in October or November of 1942." Is that true or false? A. False.

*M. Krankewicz, for Gov't, Direct.*

Q. "Joyce told me she broke up with Al Kay and married another fellow." Is that true or false? A. False. 1033

Q. "And said she needed money as things weren't so good." Is that true or false? A. False.

Q. "She then asked me if I would go to the FBI and say there was vice going on in his store and he knew it." Is that true or false? A. False.

Q. "I told her I couldn't say that and she said maybe we can get some money. Would you? A. And I said no." Is that true or false? A. False.

Q. "I left after a few minutes. A. A few days later I went up to see Al Kay and told him what she had said." Is that true or false? A. That is false. 1034

Q. "And he said don't pay any attention to her as she is crazy." Is that true or false? A. False.

Q. "I next saw Al Kay in May of 1943 and he told me Joyce caused him trouble." Is that true or false? A. True.

Q. "And would I come to court and I said yes." A. That is true.

Q. Now, you testified, did you not? A. Yes.

Q. And that was at a trial before Judge Clancy, is that correct? A. I don't remember the name. 1035

Q. But you testified for Alvin Kay, is that correct? A. That is correct.

Q. And you testified substantially as this statement appears, is that correct? A. Yes, sir.

Q. And that testimony you gave was false, is that correct? A. Yes, sir, because I didn't know what it was all about.

Q. Now with respect to these statements that appear on Government's Exhibit 13 in evidence, did you have any

*M. Krankewicz, for Gov't, Direct.*

1036 conversation with Alvin Kay about them? A. When I met

Mr. Todarelli: I can't hear,

Q. Keep your voice up, please. A. When I had—  
when I met Al he told me he had a court case with Joyce  
that is all.

Q. You did not have any further conversation with him  
about these? A. No.

Q. Now let me direct your attention to the date of Friday,  
February 1, 1946. On that date did you have a conversation  
with a woman by the name of Pauline Baker? A.

1037. Yes, sir, I did.

Q. And where did this conversation take place? A. In  
my room. I lived then at 301 East 81st Street.

Mr. Todarelli: Wait a minute. I can't hear you.

Q. Keep your voice up, please? A. I then lived at 301  
East 81st Street.

Q. Do you see Pauline Baker in the courtroom? A. Yes,  
sir, I do.

Q. Where do you see her? A. Sitting in the first row  
on the right.

1038 Mr. Hilly: Do you concede that she has now identified  
the woman whose name is Mrs. Alvin Kay or  
Mrs. Alvin Krulewitch?

Mr. Todarelli: Yes.

Q. Did you have any conversation with Pauline Baker  
when she came up to your house? A. Yes, sir.

Mr. Todarelli: Just a minute.

Mr. Hilly: I am just asking if she had any conversation  
with her.

Mr. Todarelli: Just yes or no, please, your Honor.

The Court: Yes.

The Witness: Yes.

*M. Krankewicz, for Gov't, Direct.*

Q. What was that conversation?

1039

Mr. Todarelli: Now I object, your Honor.

The Court: How do you claim that is admissible, Mr. Hilly? Was the defendant present?

Mr. Hilly: I will ask her.

Q. Was Alvin Kay present? A. No, sir, he was not.

Mr. Hilly: Then your Honor sustains the objection?

The Court: Yes.

Q. As the result of that conversation—

Mr. Todarelli: Now I object to that, your Honor,—

Mr. Hilly: All right.

1040

Mr. Todarelli: —because you see the question might indicate what the conversation was, which your Honor has ruled is inadmissible.

Mr. Hilly: I will state the rest of the question at the bench so that there can't be any doubt about it.

The Court: Does the rest of the question involve what the conversation was?

Mr. Hilly: No, it does not, your Honor.

The Court: Very well. Go ahead.

Q. As a result of that conversation that you had with Pauline Baker, did you go anywhere the next day?

1041

Mr. Todarelli: Doesn't that involve the conversation, your Honor?

The Court: No.

A. Yes, I went to the lawyer's office, Mr. Todarelli's office.

Q. You went to Mr. Todarelli's office? A. Yes.

Q. And who took you to Mr. Todarelli's office? A. Miss Baker.

Q. And was anyone else with you? A. My husband.



*M. Frankewicz, for Gov't, Direct.*

1042

Mr. Todarelli: "My husband"?

The Witness: With my husband. Mr. Frankewicz was with me.

Mr. Todarelli: I did not get that.

The Witness: My husband.

The Court: And was anybody else with you?

The Witness: In the lawyer's office?

The Court: Yes.

The Witness: There was Mr. Kay.

The Court: Mr. Kay?

The Witness: Yes. Mr. Kay wasn't in the office when I first went there. He was in the office after I had spoken to Mr. Todarelli, and then Mr. Kay came in the office later on.

1043

Q. Now, did you have any conversation with Mr. Todarelli? A. Yes, sir, I did.

Q. Who was present during this conversation? A. The first part of the conversation I was alone, then Miss Baker was in the room with me, then after Miss Baker went away he spoke to me alone again, and then Mr. Kay came in the room, and we were talking there.

1044

Q. When Mr. Kay was in the room was Mr. Todarelli present? A. Yes, sir.

Q. What was the conversation? You say you first had a conversation with Mr. Todarelli, is that correct? A. Yes.

Q. And there was no one present at that time? A. No, sir.

Q. What was that conversation? A. Well, first of all I went down there, to Mr. Todarelli's office, with the understanding that I didn't want to have nothing to do with this case at all and that I wanted to be left alone by—I told him by either side, because I didn't want to come down here

*M. Krankewicz, for Gov't, Direct.*

on this case because I knew nothing about it. I just didn't want to have nothing to do with the case.

1045

Q. Did Mr. Todarelli ask you any questions? A. Yes. Mr. Todarelli asked me questions. He asked me, I don't recall right now all the questions he did ask me; he asked me, "Do you know why you are down here?" I says, "Yes. I come down with the purpose that I don't want to be called on this case again." I said, "I don't want to be bothered with this case."

Q. What did Mr. Todarelli say? A. Mr. Todarelli said—he didn't say anything about that; he says to me, "Well, do you recall about that paper", he says, "You know you—did you say anything to Mr. Kay about that?" I said, "No. That paper was falsely." I also told him that—

1046

The Witness: Can I have a few moments, please, because I am—

Mr. Hilly: Do you want a drink of water?

The Court: Yes. The witness is very nervous. Give her a drink of water.

Do you want to wait a little longer?

The Witness: No, that is all right. I am sorry.

Q. Was there any other conversation that you had with Mr. Todarelli at that time? A. No. That was the only time I had a conversation with Mr. Todarelli.

1047

Q. Then did Mr. Kay have a conversation with you? A. Well, Mr. Kay had a conversation, and all he said was, "Mildred, the questions he asks you, I am not asking you to lie for me, just tell what Mr. Todarelli asks, you tell him what is the truth." He says, "I am not asking you to lie for me or nothing."

Q. Now, during the time that Mr. Todarelli was talking to you did he turn and say anything to Miss Baker?

*M. Krankewicz, for Gov't, Direct.*

1048 A. He just asked Miss Baker to go outside, that he wanted —Mr. Todarelli and I was talking together, that is all.

Q. Do you recall whether he said anything else at that time? A. I don't recall right now, Mr. Hilly.

Q. Mrs. Krankewicz, do you recall that on February 11, 1946 you were in my office and I took a statement from you?

A. Yes, sir, I do.

Q. And there was a stenographer present? A. Yes, sir.

Q. And there was a Mr. Rumans and Mr. Hoagland from the FBI? A. Yes.

1049 Mr. Hilly: Would you mark this statement for identification, please.

(Marked Government's Exhibit 14 for identification.)

Q. I want to direct your attention to the last question and answer appearing on page 2 of Government's Exhibit 14 for identification and I want you to just read it to yourself, Mrs. Krankewicz. Did you read that, Mrs. Krankewicz? A. Yes.

1050 Q. Did that refresh your recollection that there was something else said by Mr. Todarelli to Miss Baker? Does it refresh your recollection? A. (Witness nods.)

Q. Your answer is "Yes"? A. Yes.

Q. Will you tell us now what else was said at that time?

Mr. Todarelli: In justice to the defendant, your Honor, I think that this is not binding on the defendant.

The Court: I think you are right about that.

Mr. Todarelli: Frankly, I would rather have but I think I ought to protect my client's rights.

The Court: I think you are perfectly right on that.

Mr. Todarelli: Yes, sir.







*M. Frankiewicz, for Gov't, Direct.*

Q. Was Mr. Kay present at the time when Mr. Todarelli made the statement to Miss Baker? A. No, Mr. Kay was not present at that time; he was outside. And then Mr. Todarelli went out of the office, he went outside to get Mr. Kay.

1051

Q. Did Mr. Kay come into the office? A. Mr. Kay came into his office, yes, sir, because Mr. Todarelli was a little upset about me; when he asked me questions he asked me about me being confused about this case, and I was confused. And he said to me, well, he says, "I can't get anything out of her", and he told Mr. Kay that.

Q. Now, at that time when Mr. Kay came back into the office, did you have a conversation with Mr. Kay about this, about Government's Exhibit 13? A. Yes. Mr. Todarelli—they asked me about that paper and said that's—different things on the paper, and I said, well, it wasn't

1052

And I answered him yes and no, because I wanted to get out of his office and get away from there.

Q. Did you sign any paper in Mr. Todarelli's office? I am talking now when you were down there with Miss Baker and Mr. Kay? A. Mr. Hilley, this case has been so long that I can't recall that, whether I did or didn't. I don't want to make a false statement if I did or didn't.

1053

Q. Now, at the trial, at the second trial, do you remember there was a second trial in this case? A. Yes, sir.

Q. And on the second trial you testified for the Government, is that right? A. That is right.

Q. And at that time you testified as you have here today; that correct? A. That is correct.

Q. Now, the testimony that you gave at the first trial as false, is that correct? A. Yes, sir.

*M. Krankewicz, for Gov't, Cross.*

1054

Mr. Hilly: If your Honor please, at this time I have no further questions of this witness. You may inquire, Mr. Todarelli.

CROSS EXAMINATION by Mr. Todarelli:

Q. Mrs. Krankewicz, do you recall that when you came down to my office it was a Saturday afternoon, is that right?

A. Yes, sir.

Q. And do you recall that when you came into my office

Mr. Todarelli: Withdrawn. Your Honor, the witness is somewhat uncomposed.

1055

The Court: Do you want to have a little rest or are you able to go on?

Q. Do you want to try it, Mrs. Krankewicz? A. Yes, sir.

Q. Do you remember that one of the first things I did was to ask Miss Baker to step out; do you remember that?

A. That is right. That is when we were alone.

Q. That left you and me in the room alone? A. Yes, sir.

Q. Do you remember that I told you that what I wanted from you was the truth, regardless of whom it hurt? A. That is right.

1056

Q. Do you remember that? A. That is right.

Q. And under no circumstances were you to try to help anybody if it were not the truth? A. That is right.

Q. Do you remember that? A. Yes.

Q. Now, do you remember that I then went over this writing that is marked Exhibit 13; do you remember that?

A. Yes, sir.

Q. That is this paper here. And I asked you what was true and what was false? A. Yes, sir.

M. Krankewitz, (for Gov't, Cross.)

Q. Now as to the false part, didn't I ask you whether or not Kay had told you to testify falsely? As to what was false, didn't I say, "Did Kay tell you to say that"? Didn't I ask you that question? A. Yes, you asked me that.

1057.

Q. Didn't you say, "No, he did not ask me to do that"?

A. (Witness shakes head.)

Q. Didn't you say, "Kay, when he gave me this slip, told me that all he wanted from me was the truth"? A. Mr. Kay handed me that paper. He said: Your answers and your questions would be on that paper, and that is all. That was the paper that I signed when I first went down to there.

1058

Q. I know. What I am asking you, and please pay attention to what I am asking you: Didn't you tell me that you had put these things in there—that, rather, you had told Mr. Kay about these things but they were false, that you had done that yourself? Didn't you tell me that? A. I don't recall telling you anything like that.

Q. Don't you recall telling me that you told Mr. Kay about these things but that—and then Kay said, "Well; if that is what you are going to testify to I will write it down for you"; don't you remember that? A. No, sir. I don't recall telling you a thing like that, I don't.

1059.

Q. All right. Now, "I knew Joyce"—I will start before that. "I worked with Joyce in July, 1941." That was true, wasn't it? "I worked one month. Joyce came in about two or three nights a week." A. That is right.

Q. Was that true? A. That is right.

Q. "I knew Joyce as Mrs. Al Kay." That was true?

A. Yes, sir.

Q. "I saw her again at 77th Street, First Avenue, res-

*M. Krankewicz, for Gov't, Cross.*

1060 taurant, in October or November, 1942." Now, you told me that was not true, didn't you? A. That is right.

Q. Don't you remember me asking you, "Did Kay tell you to say that?" And you said, "No, he did not tell me to say that?" A. I don't recall you asking me that at all. I don't recall it at all.

Q. You don't recall that? A. No, sir, I don't.

Q. Well, did Kay tell you that he wanted you to put that in the statement, that he wanted you to lie about it, or didn't he tell you that he wanted you to tell the truth?

1061 Mr. Hilly: Now, when are we talking about, Mr. Todarelli? Can we fix the time on this, your Honor?

Q. When he gave this paper, Exhibit 13. A. Mr. Kay didn't ask me—didn't say anything; just told me, "When you go down on the trial", he says, that is all he had said to me, "that would be your answers and your questions; that is all."

Q. You had a talk with him before he wrote this out, didn't you? A. That is right.

Q. And didn't you give him these facts before he wrote this out? A. I did not give him no facts.

1062 Q. You didn't give him any facts at all? A. No, sir.

Q. Don't you remember telling me, in my office that you had given him all these facts? A. I don't recall telling you that, Mr. Todarelli.

Q. (Don't you remember saying that they had been very nice to you and your children? A. That I did say. Mr. Kay had been nice—spoke nice of me and my children and my family.

Q. Don't you remember your telling me that when Kay gave you this paper that you had a talk with him just before that and that you wanted to help Kay out yourself?

M. Krankewicz, by Gail Cross.

that you yourself wanted to help Kay? A. Yes, when I first spoke to Mr. Kay, Mr. Kay and I had the conversation about this, I did want to help Mr. Kay because I did not know what it was all about. The statement that was given first there is some parts that is falsely and some parts that is the truth. 1063

Q. I think you testified a moment ago, Mrs. Krankewicz, that at the second trial you told the truth just as you are telling it today; is that right? Is that right? A. Yes.

Q. Page 243.

Mr. Todarelli: Now, in order to make sense, your Honor, I have to ask a few questions that are not particularly pertinent to this. 1064

The Court: That is all right. Go ahead.

Q. "Q. You never met Joyce and she never told you any of those things, did she? A. That was the only part that was not true."

"The Court: Repeat that loudly."

"A. That was the only part that was not true."

"Q. That is the only part that was not true. You never met Joyce? That was not true? A. I did not see Joyce."

"Q. She never asked you to go up and see Kay, did she?"

Mr. Wallace interposes: "She shook her head."

"The Court: She should answer. This reporter has not quadruple vision."

"Q. Joyce never asked you to go to the FBI, did she?"

A. No, sir.

"Q. You never said to Joyce: 'I told her I could not say that.' She said, 'Maybe we can get some money.' A."

Mr. Todarelli: Let me read that again, please, your Honor.



*M. Krankewicz, for Albert Cross*

1066

Q. "Q. You never said to Joyce quote I told her I could not say that unquote. She said quote Maybe we can get some money unquote. A. No, sir.

"Q. You never, of course, told her that? A. No.

"Q. A few days afterwards you never went up to Al Kay and told him this story? Al Kay told you to say all those things? A."

1067

Listen, please, Mrs. Krankewicz: "I was not told to say them. He said, 'Those are the questions you will be asked, and those'"—unquote, and then you continued, Mrs. Krankewicz: "and those were my answers. He did not tell me I was to say it."

Now, isn't that right?

Mr. Hilly: If your Honor please, I submit that there is nothing contradictory in that.

The Court: That is just as she has testified today.

Mr. Todarelli: Then I confess I have misunderstood her completely.

The Court: Here is what she said. She told Mr. Kay she wanted to help him out—

Mr. Todarelli: Yes.

The Court: In substance, with her own services.

1068

Mr. Todarelli: Yes, sir.

The Court: Then he handed her a piece of paper and said, "Those are the questions and answers, those are the questions that will be asked of you." In substance, that is as I recall her testimony, and may be mistaken.

Mr. Todarelli: Well, I understand her to say that she had a talk with the defendant before she—before he gave her this, and that he then said to her,

*M. Krankewicz, for Gov't, Cross.*

according to her testimony; and I had better read it, 1069  
 "Those are the questions you will be asked."

The Court: I may be mistaken. Go ahead and  
 ask her, Mr. Todarelli.

Q. Now, when you testified and gave the answer that  
 I just read, and you said this, "He did not tell me I was to  
 say it", isn't that true, he did not tell you you were to say  
 this, did he? A. He just told me that there is the paper,  
 that is your answers to questions that you probably will be  
 asked, and that is all.

Q. And these were all put in here, in this Exhibit 13,  
 after you had a talk with him and volunteered to help him 1070  
 out? A. After we had a talk together he asked me would I  
 go for him and I said yes, sir, if I can help you, yes, sir, and  
 then after I got the paper.

Q. In other words, he did not ask you to lie when you  
 came to court, did he? Isn't it a fact, Mrs. Krankewicz, that  
 the lying was a voluntary act on your part? A. Mr.  
 Todarelli, that is one thing, I don't care, for the Court or  
 for who, I am not lying for nobody no more. Mr. Kay gave  
 me that paper and he asked me to say that. And I am not  
 lying for nobody no more for no one.

Q. Didn't you tell me that Mr. Kay did not ask you 1071  
 to lie but that what you gave was your own idea because  
 you thought it would be nice to help him out; didn't you tell  
 me that?

Mr. Hilly: I object to that, if you: Honor please.

The Court: I will permit the question.

Q. Didn't you tell me that, Mrs. Krankewicz? A.  
 Whether you—do you mean to say when you asked me not  
 to lie for no one if it is the truth, I should tell you? That,  
 I told you that. But you asked me about Mr. Kay.

*M. Krankewicz, for Gov't, Cross.*

1072 Q. I don't know if you understand my question. Didn't you tell me in my office on that Saturday afternoon that Kay had not asked you to lie but that these things that were in this statement you had told him and you thought you would help him out by putting them in, and you were very sorry that you had ever done it? Didn't you say that in effect to me? A. Mr. Todarelli, I did not say that to you. I don't recall saying that to you. All I came up to your office was on one understanding, that I did not want to be bothered with this case, that is all I came up to your office. This case has been going on so long it is hard for a person

1073 to remember all these things they are bringing up.

Q. Were you asked this question and did you give this answer?

Mr. Todarelli: On page 252.

Q. (Continuing) "Q. Since the last trial which was in July since you gave your testimony you were examined by the agents of the Government, weren't you? A. Yes."

Mr. Hilly: If your Honor pleases—

Mr. Todarelli: I am about to lead up to it, Mr. Hilly. I can't make sense out of it unless I do. Really I can't.

1074 The Court: Go ahead.

Mr. Hilly: Will you show me the question?

Mr. Todarelli: This is the question that I want to ask, right here (indicating). If you can suggest to me how I can lead up to it.

Mr. Hilly: No. I have no objection to that. I did not see that far ahead. Well, as a matter of fact, no, no. I will object to that, if your Honor pleases, because it is not contradictory of any testimony that this witness has given here today.

*M. Krankewicz, for Gov't, Cross.*

The Court: I have not heard it yet. I don't know. 1075

Mr. Todarelli: I am sorry, your Honor, I disagree with Mr. Hilly.

The Court: Go ahead, Mr. Todarelli.

Q. "Q. How long did they question you? A. Not very long.

"Q. But they did question you at some length, didn't they? A. Just asked me a few questions, that is all.

"Q. After they spoke to you you saw Al Kay again, didn't you? A. I went up to my girl friend's and seen Mr. Kay, yes."

Mr. Todarelli: Then Mr. Wallace interposes, "I went up to see Mr. Kay." 1076

Q. "Q. Mr. Kay had a talk with you, didn't he, about being a witness? A. To still be his witness.

"Q. Did you tell Mr. Kay that you had been seeing these agents? A. Yes, sir."

"Q. You told him what you said? A. I told him what I told them, yes.

"Q. Didn't he say he wanted you to tell the truth? A. When I am on the stand to tell the truth.

"Q. Didn't he say to you to tell the truth no matter what it is? A. No matter what it is I should tell the truth." 1077

Weren't you asked those questions and didn't you give those answers at the last trial? A. Yes, sir, I did give them.

Q. All right. And that was true, wasn't it? A. Would you explain something to me? What are you trying to bring out, what is true? I just can't get it, Mr. Todarelli.

Q. I asked you only this, Mrs. Krankewicz: You said to Mr. Wallace, and I think it was his last question or the next to the last question—no, I think it was the last question. First he asked you what you testified to at the first trial,

*M. Krankewicz, for Gov't, Cross.*

1078

whether that was untrue and you said Yes. A. That is right.

Q. Then he asked you if what you testified to at the second trial was the truth. A. Yes, sir.

Q. And you said Yes? A. Yes.

Q. Now, I am reading to you the testimony of the second trial, and I asked you weren't you asked those questions and didn't you give those answers. A. (No response.)

The Court: Do you understand the question, Mrs. Krankewicz? The question is simply this: At the other trial were you asked those questions and did you give those answers?

1079

The Witness: Yes, sir. I really—

The Court: The answer is Yes, sir.

The Witness: Yes, sir.

Q. Then do you remember being asked by Mr. Wallace:

“Q. He told you if he did not call you, you need not come down here?” A. Yes.”

Then Mr. Wolf interposes:

“Q. Didn't you say you were going to be called by the Government? A. I said I did not know. He asked me did I get a call by them. I said, No.”

1080

Mr. Todarelli: I am leading up to the next to the last question.

Q. “Q. But you told him a Government representative had talked to you, didn't you? A. That is right.

“Q. Isn't that right? A. That is all I said.

“Q. He said that they would probably call you as a witness, didn't he? A. He asked me if I got subpoenaed to court, that is all.

“Q. Didn't he tell you that he knew they were calling you down and so it was not necessary for him to call you?



*M. Krankewicz, for Gov't, Cross.*

Didn't he say that? Didn't he say, at any rate; whoever calls you, for you to tell the truth? A. That is right.

1081

Q. No matter what the truth was? A. That is all." Weren't you asked those questions and didn't you give those answers? A. If they are on the book I must have.

Q. Well, you testified to the truth at the last trial, didn't you, Mrs. Krankewicz? A. Just the same as they asked me now I told them the same then as I am saying now.

Q. Now, Mrs. Krankewicz, do you remember at this last trial—rather at the trial that I read from which is the second trial before Judge Porterie, do you remember that that was in August, 1943? Do you remember that? A. I know I came down for the trial.

1082

Q. It was in the summertime. Do you remember both trials took place in the summer? Do you remember that? A. I don't know when they took place. I just know I came down.

Q. Just one last question, Mrs. Krankewicz. In the statement you say this:

"I told her"—meaning Joyce—"I couldn't say that." Well now, I will have to read the sentence before.

"She then asked me if I would go to the FBI and say there was vice going on in his store and he knew it. I told her I couldn't say and she said maybe we can get some money."

1083

Now, what is the fact as to whether or not vice was going on in his store while you were working for him? Was there?

A. No, sir.

Q. There was not? A. No, sir.

Mr. Todarelli: All right. That is all.

Mr. Hilly: No further questions. Thank you very much, Mrs. Krankewicz.

*F. C. Chastain called for Government*

1084 By Mr. Todarelli:

Q. Just a minute, please. By the way, what did you do there? A. I was—

Q. At the store? A. I was a hostell. I worked behind the bar serving the drinks.

Mr. Todarelli: Will you read that, Mr. Reporter?

The Court: "I was a hostell. I worked behind the bar serving the drinks."

Mr. Todarelli: That is all.

Mr. Hilly: Thank you. No further questions.  
(Witness excused.)

1085 Mr. Hilly: Because of the fact that we finished up earlier than I had anticipated, your Honor, I have no further witnesses available.

The Court: Well, we are within ten minutes of the recess time, and so we will take our recess until tomorrow morning at 10:30.

(Adjourned to April 18, 1947, at 10:30 o'clock a. m.)

New York, April 18, 1947; 10:30 o'clock a. m.

1086 Trial resumed.

FRED C. CHASTAIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: For the record; on the matter in which authorities were presented yesterday, the ruling of the Court as made will stand.

Mr. Todarelli: Yes, your Honor.

The Court: If there are to be requests to charge, I would appreciate it very much if they might be

ready for submission at the opening of court Monday.

1087

Mr. Todarelli: I will have as many as I can, and if something develops between Monday and the remainder, then your Honor will permit us to submit additional ones.

The Court: That is right. But I would like to have the bulk of them Monday morning.

Mr. Todarelli: Certainly.

Mr. Hilly: If it would serve your Honor's convenience I can give them to you today. I can serve Mr. Todarelli with my—

1088

The Court: That is perfectly satisfactory.

Mr. Todarelli: Would it help your Honor, in that respect, if we submit to you the record of the last trial, because I suspect that the record of the last trial which contains the requests will be substantially—are substantially as they will be—

The Court: Yes. I will be glad to look it over. You can hand it up later, Mr. Todarelli.

DIRECT EXAMINATION by Mr. Hilly:

Q. What is your occupation, sir? A. Real estate.

Q. By whom are you employed? A. I beg pardon?

1089

Q. By whom are you employed? A. Milton Barkin Management.

Q. Was Milton Barkin Management handling a piece of property located at 325 East 77th Street? A. They do.

Q. Did they manage that piece of property in July, 1940? A. They did.

Q. I show you this piece of paper and ask you if you can tell me what that is? A. That is a lease application, application to lease the apartment.

*F. C. Chastain, for Gov't, Direct.*

1090 Q. Application to lease the apartment? A. Correct.

Q. Does that paper bear your signature? A. It does.

Q. Does it bear the signature of the applicant for the apartment? A. It does.

Q. Now, the upper portion of the paper is in pencil, is that right? A. Yes.

Q. In whose handwriting is that? A. That is my handwriting.

Q. The information it has, thereon, where did you get that from? A. From the applicant.

Q. Do you see the applicant in court, Mr. Chastain?

1091 Mr. Todarelli: We will concede that he knows the defendant.

A. I believe this is the gentleman (indicating). I haven't seen him in a number of years.

Mr. Todarelli: And is identifying the defendant.

Mr. Hilly: And you are conceding the identification of the defendant Alvin Krulewitch?

Mr. Todarelli: Oh, yes.

Q. This signature Alvin Kay, was that affixed in your presence? A. Yes, sir.

Mr. Todarelli: I have no objection to it going in evidence, Mr. Hilly.

1092

Mr. Hilly: All right, then, the application or the lease.

Mr. Todarelli: Do you mean the application?

Mr. Hilly: Yes, I want to put the application in too.

Mr. Todarelli: Perhaps I had better look at that. No objection.

(Marked Government's Exhibits 15 and 16.)

Q. And on Government's Exhibit 15, the signature Alvin Kay that appears on that, was that affixed in your presence?

A. Yes, it was.

*J. M. Sullivan, for Gov't, Direct.*

Q. And that was affixed by the man you have identified here, is that correct? A. That is correct.

1093

Mr. Hilly: With your Honor's permission I would just like to read certain portions of both of these exhibits to the jury.

I am reading, ladies and gentlemen of the jury, from Government's Exhibit 16, in evidence.

(Mr. Hilly reads portions of Government's Exhibit 16 to the jury.)

Mr. Hilly: And then Government's Exhibit 15 in evidence is the lease for these premises, and on the last page appears the signature Alvin Kay.

1094

I have no further questions of this witness at this time, if your Honor pleases.

Mr. Todarelli: No questions.

The Court: That is all.

(Witness excused.)

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JOSEPHINE MARGARET SULLIVAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

1095

Q. Miss Sullivan, what is your occupation? A. Ticket seller in Pennsylvania Railroad.

Q. You can sit down, Miss Sullivan. And how long have you been so employed? A. 28 years past. This is my 29th year.

Q. Now, on October 9, 1941, were you so employed? A. Yes, I was.

Q. Now, let me direct your attention to those and ask you if you can tell me what they are? A. These are stubs



*J. M. Sullivan, for Gov't, Direct.*

1096 of tickets that were sold to Miami. This is my writing and I sold them.

Q. And how many tickets do those papers represent?

A. Three.

Q. And are they all round trip tickets or are there some that are not round trip tickets? A. There are two one-way fares and one round trip ticket.

Q. And what was the number of the one-way ticket?

A. 19743.

Mr. Todarelli: Let me see them. We will probably concede it.

1097 Mr. Hilly: I will offer it in evidence, if your Honor please.

Mr. Todarelli: Of course they have no relevancy at this time, but I assume that Mr. Hilly expects to connect them.

Mr. Hilly: I have such an anticipation your Honor, yes.

The Court: Very well. For that purpose—

Mr. Todarelli: Under those conditions I don't object.

1098 The Court: —they may be received and marked as an exhibit.

(Marked Government's Exhibit 17.)

Q. Miss Sullivan, looking at Government's Exhibit 17 in evidence, will you tell me when these tickets were purchased? A. October 31.

Q. Pardon me? A. October 21, 1941. They may have been purchased previously, but they were sold for use on October 21, 1941.

Q. That you are sure of, that they were sold— A. For use on October 21, 1941.

*J. M. Sullivan, for Gov't, Cross.*

Q. But you can't tell us the date when they were actually purchased? A. It does not state, no. 1099

Q. Looking at this ticket bearing No. 32500, is that the round trip ticket? A. That is right. This is the round trip fare.

Q. And these other two tickets, the first of which bears the number 19743 and the other the number 19744— A. Yes, they are one-way fares.

Q. —those are all one-way fares? A. Yes, sir.

Mr. Hilly: I have no further questions of this witness at this time, Mr. Todarelli.

CROSS EXAMINATION by Mr. Todarelli: 1100

Q. Is it Mrs. Sullivan? A. No, Miss Sullivan.

Q. Miss Sullivan? A. Yes.

Q. Is there anything on these tickets—by the way, these are merely the stubs? A. That is right.

Q. When a passenger comes up and wants to buy a ticket you give him a long sheet of tickets? A. That is right.

Q. And then one end of it is a stub? A. That is right.

Q. And these are the stubs? A. Yes.

Q. And those are kept by you, aren't they? A. That is right, that is for the auditing department, our records. 1101

Q. In other words, so that you will turn in that money? A. That is right.

Q. Now, are you able to tell us from looking at those stubs when the tickets were bought? A. No, I am not able to tell you when they were bought. I may have sold them a week in advance or more than that, but the date on which you buy them I put down the date that they were to be used.

Q. Didn't you testify at the last trial that they were bought on October 9th? A. No, sir, I didn't. There is no way that I could tell you that.

*J. M. Sullivan, for Gov't. Cross.*

1102

Q. Well, weren't you asked this question—

Mr. Todarelli: Page 202 at the trial before Judge Porterie.

Q. Do you remember Judge Porterie in this court? A. Well, I remember being in the court.

Q. And weren't you asked these questions before Judge Porterie:

"Q. When were they sold by you? A. They were sold October 9th.

"Q. Of what year? A. 1941.

1103 "Q. For use on what date were they sold? A. For October 21, 1941."

Weren't you asked those questions and didn't you give those answers? A. That I don't remember, and the only way I could be sure of that is if they had my tour sheet showing the sale of those tickets.

Q. Well, where is your tour sheet? A. Well, that I haven't got, but they were—I believe they had them at the other trial.

Q. The other trial? A. Uh huh.

1104

Q. And wasn't it because you looked at the tour sheets that you testified at the last trial that they were bought on October 9th? A. Well, I can't—

Q. You did not pick out the date October 9th out of the air? A. No.

Q. Did you? A. No, I couldn't.

Q. Of course. A. That is why I say the only reason I could have given you that date is that I must have seen something definite to show that they had been bought on that date.

Mr. Todarelli: I now call upon the Government for the production of the tour sheet.

*J. M. Sullivan, for Gov't, Cross.*

Mr. Hilly: I would be most happy to produce that tour sheet if I had it, but I have been unable to locate it. Do you want a concession? 1105

Mr. Todarelli: Well, your Honor, there ought to be a concession of some kind here, because here is a lady that testified that she could tell from a tour sheet, and I want the concession that they were bought on October 9th as she testified at the last trial.

Mr. Hilly: I have no objection to that, your Honor. I make that concession.

Q. Now, another thing. You in your capacity as ticket agent, of course, do not know whether those long tickets that you gave the passenger were ever used, do you? A. No. 1106

Q. You don't know when they were used, if at all? A. No, they should have been used October 21.

Q. All you can testify, Miss Sullivan, is that you sold them for use on October 21, and after that you know nothing further about it, right; is that right? A. That is right.

Mr. Todarelli: All right. That is all.

(Witness excused.)

Mr. Hilly: Reginald Delaney. 1107

Mr. Todarelli: Would it be out of order for me to read these to the jury, your Honor?

The Court: No, Mr. Todarelli.

Mr. Todarelli: As to these three tickets, ladies and gentlemen of the jury, each of them shows that they are reserved for a certain specific seat number on the train, The Champion, leaving at 3:55 p. m. October 21, 1941, and it then gives the amount of the fare.

*R. V. Delaney, for Gov't; Direct.*

1108

REGINALD V. DELANEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Delaney, what is your occupation? A. Ticket seller, Pennsylvania Railroad.

Q. And how long have you been so employed? A. Six years.

Q. And were you so employed on October 21, 1941? A. Yes, sir, I was.

1109

Q. Will you look at this sheet of paper, that piece of paper, and tell me what that is, sir? A. That is a round trip ticket to Miami, Florida.

Q. Looking at this sheet, will you tell me when you sold that round trip ticket? A. It was sold on October 24, 1941.

Q. And when did it call for passage? A. It called for passage on November 25, 1941.

Q. Is there anything in this ticket that appears in your handwriting? A. Nothing in my handwriting, but my stamp is on the back of it, showing that I sold it.

1110

Q. Showing that you sold it? A. That is right.

Q. Each ticket seller in the Pennsylvania Railroad has their own individual stamp, is that right? A. That is correct.

Q. And is this your tour sheet, or work sheet for that day? A. That is correct.

Q. And that shows the sale of the ticket? A. That is right.

Q. And this notation on the back of the ticket, is that in your handwriting? A. No, sir, it is not.



*R. F. Delaney, for Gov't, Cross.*

Mr. Todarelli: I assume this will be connected also?

1111

Mr. Hilly: Yes, it will, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It may be received and marked as an exhibit.

(Marked Government's Exhibits 18-A and 18-B.)

Mr. Hilly: Reading from Government's Exhibit 18-B (reading exhibit).

Mr. Hilly: I have no further questions of this witness at this time.

Mr. Todarelli: What is this number, please, the tour sheet?

1112

Mr. Hilly: 18-A.

CROSS EXAMINATION by Mr. Todarelli:

Q. This tour sheet, 18-A, Mr. Delaney, just tell us what it is, will you? A. Well, it is a sheet on which we list the sales of all tickets made during that day.

Q. In other words, if I came up to you at the window, and you are at the window, aren't you? A. Yes.

Q. I come up to the window and I say to you, "I want to buy a ticket to Miami, Florida"? A. Yes.

Q. And you pull out one of these? A. That is right.

1113

Q. Exhibit 18-B, and then after you fill it out you retain a stub, don't you? A. That is correct.

Q. And then on the tour sheet, which is 18-A, you put down the number of the ticket that is bought? A. No, we don't put down the number.

Q. No? A. We just put down the price of the ticket.

Q. The price of the ticket? A. The price that is charged for the ticket.

1114 Q. Well, what is all this stuff over here, form No. 2044? What is that stuff? Read one of those lines to me, will you, the top line? A. These are tickets that have been redeemed, and that would show on the face of it here, the 4035 would show up here.

Q. Show us the tour sheet. A. That is the listing of the tour sheet. If we have any credits then we list them on back here giving the explanation. In other words, this is what we charge and this is anything that we refund and take credit for.

1115 Q. No. What I want to know is this: What relation has the tour sheet to the ticket, to this ticket, this particular ticket? A. Just as to the price.

Q. You mean that all that appears on this tour sheet is the price? A. That is correct.

Q. And that is all? A. That is right.

Q. \$40.35? A. \$40.35 and \$2 tax, \$42.35.

Q. \$42.35? A. Yes.

Q. The number of the ticket is not here? A. No, sir.

1116 Q. Well, how do you know that this is the ticket then that you sold on that day? A. I sold a ticket to Miami on that day for use on the date that is on the back of the ticket.

Q. Yes. Well, how do you know that from your tour sheet? A. We just know it from the price.

Q. Well, you sold more than one ticket to Miami on that day, didn't you? A. On that day, no.

Q. Well, what is there on the ticket that shows that it was bought on October 21st? A. There is nothing on there.

Q. Well, how do you know that this ticket was not bought on October 10 or November 8? A. I can't tell only from the stub that is turned in with this tour sheet.

R. V. Delaney, for Gior't, Cross.

Q. Where is the stub? A. That would be—well, as far as I know, this stub is turned in with that sheet and that was retained by the auditor.

1117

Q. But look, Mr. Delaney, you can't tell, can you, from looking at 18— A. Not—no, I cannot.

Q. Excuse me. Let me finish the question, please. You can't tell from looking at this tour sheet, 18-A, and looking at this ticket, 18-B, that this ticket, 18-B, was bought on October 21, can you? A. No, not from this.

Q. When you testified it was bought on October 21 then you were testifying to something that was not quite so?

A. Well—

1118

Q. Isn't that right? A. Well, I testified that I sold the ticket for use on that date, and as the record shows we sold one on that date, and the small stub that goes on there is turned in with this tour sheet.

Q. Well, look at that man at the end there. His name is Alvin Kay.

(Defendant stands in the courtroom.)

Q. Do you know him? A. No, sir.

Q. You never saw him, or at least you never remember seeing him, do you? A. No.

Q. You do not testify, do you, that that man came up to your window and bought this ticket, 18-B? A. No, sir, I could not.

1119

Q. You don't know who bought it, do you? A. No, sir.

Q. You don't know when it was bought? A. No, not unless I have the stubs.

Q. Mr. Delaney, after all, you are testifying under oath, and I am sure you want to tell the truth. You can't testify that this ticket, 18-B, was bought on October 21, can you? A. No, I can't tell you that as it is there—

*R. V. Delaney, for Gov't, Cross.*

1120 Q. No. A. —but the stub of that ticket—

Q. I mean you do not have the stub here, Mr. Delaney?

A. No.

Q. And without the stub you can't tell, can you? A.

No.

Mr. Todarelli: I move that this witness's testimony be stricken, your Honor.

The Court: I will let it stand. The testimony may stand. Your objection goes to the weight of the testimony?

Mr. Todarelli: No, your Honor.

1121

The Court: I ruled, Mr. Todarelli. Let us not argue about it.

Mr. Todarelli: May I make my point?

The Court: Yes.

Mr. Todarelli: I believe this witness is telling the truth. I do not say that there is any lack of weight to be given to it, but I say that these exhibits should be withdrawn now because it does not appear affirmatively that they were bought on October 21, and there is no connection whatever with the defendant Alvin Kay. They were admitted subject to connection, and I say now their connection has not been established.

1122

The Court: They were admitted subject to connection?

Mr. Todarelli: Yes.

The Court: And that it would be shown that the defendant had something to do with the purchase of them.

Mr. Todarelli: Yes.

The Court: That was the condition.

*R. V. Delaney, for Gov't, Cross.*

Q. Well, Mr. Delaney, what time did you work in those days, or on October 21? A. It shows on the top of that sheet. I believe it was from midnight, 11:50 at night until 8 in the morning. 11:50 p. m. till 7:50 a. m.

1123

Q. Now, when you came on duty you put a stamp up here in the upper righthand corner October 21? A. That is right.

Q. Did you put that stamp on? A. Yes, sir.

Q. In other words, at 11:50 p. m. you came on duty October 21? A. No, 11:50 p. m. of the 20th.

Q. Of the 20th? A. But the day's work was all done on the 21st.

1124

Q. I see. A. Midnight until 8 o'clock.

Q. In other words, you did not go to work at 11:50 on October 21, did you? A. 11:50 p. m. on October 20.

Q. As far as this sheet is concerned? A. That is right.

Q. So that if you sold any tickets that day you sold them between 11:50 p. m. and 7:50 in the morning, is that right? A. 11:50 p. m. to 7:50 in the morning of the 21st.

Q. I just want to make sure I have it. Between 11:50 p. m. on October 20 and 7:50 a. m. on October 21, isn't that right? A. That is right.

Q. All right.

1125

Mr. Hilly: Look at Government—

Mr. Todarelli: Just a minute.

Mr. Hilly: I am sorry, Mr. Todarelli.

Q. The fact of the matter is that that ticket was never used, was it? A. From looking at it I would say no. It was just used for checking baggage and that was cancelled on the back of it.

Mr. Todarelli: That is all.



*R. V. Delaney, for Gov't. Re-direct: Re-cross.*

1126 RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Look at Government's Exhibits 18-A and B. Your best recollection, is it not, sir, is that this ticket was sold on October 21, is that correct? A. Well, if we had the stub on that I could—

Q. You could say it positively, is that correct? There would not be any doubt in your mind, is that right?

Mr. Todarelli: Well, now, all right. Let it go.

A. Well, there is no way of showing on this sheet that that actual number was sold on that date.

Q. Yes, but taking both exhibits together what is your best recollection?

1127

Mr. Todarelli: Well, I object to that, your Honor.

The Court: What is the objection?

Mr. Todarelli: He says—the objection is that he said he can't tell us that. He told me he can't testify as to when it was bought.

The Court: Well, if he has no recollection he can't say so, Mr. Todarelli.

The Witness: No, I could not say positively with those two together.

Mr. Hilly: I have no further questions.

1128

RE-CROSS EXAMINATION by Mr. Todarelli:

Mr. Todarelli: Let me have the last exhibit, please.

(Mr. Hilly hands exhibit to Mr. Todarelli.)

Q. Do you recognize Exhibit 17 as the stubs? A. They are the stubs.

Q. In other words, they are what the ticket agent retains when a ticket is sold? A. That is correct.

Q. Now, Miss Sullivan testified that they were sold for use on October 21? A. That is right.

*L. Rubin, for G. T. Direct.*

Q. They do not show the date they were bought, do they? 1129

A. No, they show the date that they were to be used.

Q. Yes. In other words, you said that stub would show the date that they were bought. The stub does not even show the date they were bought, isn't that right? A. That is correct.

Q. And you were mistaken when you said the stub would show it? A. The stub very often shows the date that they are sold because some ticket sellers have a habit of putting the date of sale as well as the date that they are to be used on the back.

Q. Is that your habit? A. It was at one time, yes, sir. 1130

Q. Was it in October, 1941? A. I believe it was then.

Q. So if you had the stub you would know when the ticket was sold? A. I am quite sure.

Mr. Todarelli: That is all.

Mr. Hilly: I have no further questions. Thank you, Mr. Delaney.

(Witness excused.)

Mr. Hilly: Louis Rubin.

LOUIS RUBIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1131

Direct Examination by Mr. Hilly:

Q. Mr. Rubin, what is your occupation, sir? A. Chief ticket seller, Pennsylvania Railroad, Pennsylvania Station.

Q. And how long have you been so employed? A. Well, I have been in their employ now for 34 years.

Q. Will you look at these papers, and I ask you if they are records of the Pennsylvania Railroad kept in the regular course of business? A. They are.

*L. Rubin, for Gov't, Direct.*

1132

Q. And is it part of the regular course of business of the Pennsylvania Railroad to keep such records? A. It is.

Q. And this is a tour sheet? A. It is.

Q. And this is a tour sheet? A. It is.

Q. Is it maintained by a man named Joseph Golub? A. It was.

Q. And where is Mr. Golub now? A. I am not sure where he is, but he is somewhere in New York City.

Q. Is he employed by the railroad now? A. Not by Pennsylvania.

1133

Mr. Todarelli: I will not object provided your Honor will permit me to move to strike them out in case they are not connected.

The Court: Yes, you may.

(Marked Government's Exhibits 19-A, 19-B and 19-C.)

Q. Now, looking at Government's Exhibit 18-B in evidence, was that ticket used? A. No, sir.

Q. That ticket was cancelled? A. Yes, sir.

Q. Now, looking at Government's Exhibit 19-A, is this a ticket that was purchased? A. The stub of a ticket.

Q. The stub of a ticket that was purchased? A. Yes.

1134

Q. And when does that ticket call for passage to Miami? A. It looks like November 20.

Q. Now, Government's Exhibit 19-C, what is that, Mr. Rubin? A. This is a redemption form we use for handling refunds.

Q. It is a redemption form used for the handling of refunds? A. That is right.

Q. And in connection with what ticket was it used? Does the ticket have a ticket number there? A. Yes. 32567.

*L. Rubin, for Gov't, Direct.*

Q. And is that the ticket number that appears on Government's Exhibit 18-B? A. Yes, sir. 1135

Q. So that this paper here was the redemption form used to redeem that ticket, is that correct? A. Yes, sir.

Q. Now, that is known as the credit, is it not? A. That is right.

Q. Does that credit appear on Government's Exhibit 19-B? A. Yes, sir.

Q. It does appear? A. Yes, sir.

Q. And is the ticket number there? A. It is.

Q. Now, when this ticket was redeemed, is this the stub of the ticket that was used or that was sold in its place, rather? A. That is right. 1136

Q. And does the number of that ticket appear on that paper? A. That is right, yes, sir, it does.

Q. And that ticket number is 32774? A. That is right.

Q. Now, this entire transaction was handled by Mr. Golub, is that correct? A. That is right.

Q. Are you familiar with Mr. Golub's handwriting? A. Well, I was at the time.

Q. Will you look at these and see if this is in Mr. Golub's handwriting?

Mr. Todarelli: If Mr. Hilly says it is I don't dispute that. 1137

Mr. Hilly: I do not say it is, Mr. Todarelli.

Mr. Todarelli: What?

Mr. Hilly: I don't say that it is.

Mr. Todarelli: I don't dispute it.

The Witness: Well, I would say because he has his die impression on there that that indicates that it was his.

Q. Now, the signature that appears down here, is that

*L. Rubin, for Gov't, Direct.*

1138 the signature of the person redeeming the ticket? A. It is.

Mr. Hilly: Now, with your Honor's permission I would just like to read this, and I am reading now from Government's Exhibit 19-C in evidence:

"Pennsylvania Railroad Company. This is to certify that ticket form No. 677H"—

Q. Does that number, 677H, appear on there, Mr. Rubin?

A. Yes, right in here (indicating).

Q. How are you able to locate it? A. It appears on all the coupons.

1139 Q. That number, 677H, appears on all the coupons? A. That particular position on the coupon.

Mr. Hilly: Then it indicates No. 32567.

Q. Now, is that the ticket number? A. That is the number of the ticket.

Q. And the other number is the number of the form, isn't it? A. The number of the form.

Q. And this was a round trip ticket? A. A round trip ticket.

(Mr. Hilly reads balance of Government's Exhibit 19-C to the jury.)

1140 Q. And in the notation on the back of this ticket it shows the cancellation and the transfer of the baggage to this other ticket, is that correct? A. That is right.

Q. Now, Exhibit 19-A called for an earlier passage to Miami than Government's Exhibit 18-B, is that correct, Mr. Rubin? A. This is November 20 and that is November 25.

Q. 18-B called for passage on November 25, is that correct? A. Yes, sir.

Q. And 19-A called for passage on November— A. 20.



*L. Rubin, for Gov't, Cross.*

Mr. Hilly: I have no further questions of this witness, Mr. Todarelli. 1141

CROSS EXAMINATION by Mr. Todarelli:

Q. Will you forgive me if I say I have forgotten your name? A. Rubin.

Q. Mr. Rubin, just let us explain this and see if I understand it. At some time prior to November 20 Al Kay came up, or somebody came up to the Pennsylvania Station and bought this long ticket, is that right? A. That is right.

Q. 18-B? A. Yes.

Q. That called for passage on November 25? A. The date on the back would indicate that. 1142

Q. Right. A. That is right.

Q. Then Al Kay changed his mind and said, "I want to go down earlier", is that right? A. Yes.

Q. So he came up here and filled out this sheet, which is 19-C, and he said in effect, "I want to leave earlier. Therefore, I want a new ticket." A. That is right.

Q. And he turned in this long ticket here? A. That is right.

Q. And there was given to him a new ticket, and the new ticket that he was given called for passage on when, November 20? A. It says there on the front November 20. 1143

Q. All right. And the date that he did that was what, November 18? A. Evidently from there but I can't tell without having the record.

Q. Well, what would this November 18 be? A. The ticket seller had his die set for November 18 and then changed it to November 20. Evidently that is the date he wanted to leave. Ordinarily it should only had one die impression on there.

*A. C. Salembier, for Gov't, Direct*

1144

Q. In other words, you can't tell when Al Kay came up there and got a new ticket, can you? You don't know when that was, do you? A. No.

Q. There is nothing here which would indicate when it was, is there?

The Court: Is there any date on there?

The Witness: Yes, November 18 is the date.

Q. In other words, what happened probably is that this fellow, the ticket seller, had this— A. Date set for the 18th.

1145

Q. And then he realized— A. He wanted to leave on the 20th.

Q. —he wanted to leave on the 20th and so he set it two days ahead? A. To the 18th.

Q. The story is, in other words, that on November 18 Al Kay came up to the station and said, "Sell me a new ticket. Here is the old one", and they gave him a new ticket? A. Yes.

Q. Is that all there was to the transaction? A. That is all.

Mr. Todarelli: That is all.

Mr. Hilly: I have no further questions, Mr. Rubin.

1146

The Court: That is all, Mr. Rubin.

(Witness excused.)

Mr. Hilly: Augustus Salembier.

AUGUSTUS C. SALEMBIER, called as a witness on behalf of the Government, being first duly sworn, testified as follow:

Direct Examination by Mr. Hilly:

Q. What is the correct pronunciation of your name, sir?

A. Salembier.

*A. C. Salembier, for Gov't, Direct.*

Q. Mr. Salembier, what is your occupation? A. Chief Clerk in the Ticket department, Pennsylvania Railroad. 1147

Q. And how long have you been employed there? A. 30 years.

Q. How long have you been in the baggage department? A. Approximately ten years.

Q. Now, is this a record of the Pennsylvania Railroad Company kept in the regular course of business? A. It is.

Q. And is it part of the regular course of the business of the Pennsylvania Railroad to keep such a record? A. Yes, sir. 1148

Q. And do you know the name of the man that kept that record? A. John F. Gaynor.

Q. Do you know where John F. Gaynor is now? A. Deceased.

Mr. Hilly: I will offer this.

Mr. Todarelli: I assume that these records are kept in the regular course of business, are they?

Mr. Hilly: I think the witness so testified.

The Witness: They are.

Mr. Todarelli: Subject to connection I have no objection. 1149

(Marked Government's Exhibit 20.)

Q. And when was Government's Exhibit 20 made or prepared, Mr. Salembier? A. That was made on October 18, 1941.

Q. And is that a record indicating the checking of the baggage? A. It is.

Q. Now will you see if there is any baggage in Government's Exhibit 20 which was checked through to Miami,

*A. C. Salembier, for Gov't, Direct.*

1150 Florida, on tickets 19744 and 19742? A. There is such record.

Q. And also on ticket 32500? A. There is.

Q. Now, were those pieces of baggage assigned baggage numbers? A. They were.

Q. And were the baggage numbers that were assigned baggage numbers 536877, or will you let me withdraw that question. Will you tell me the baggage numbers that were assigned for the baggage checked through on these tickets?

A. 536754, 5, 6, 7.

Q. 536754 and 55 did you say? A. 54, 55, 56, 57, and

1151 559035.

Mr. Hilly: I would just like to draw the jury's attention to Government's Exhibit 8-A which shows the numbers, 536754, 55, 56 and on Government's Exhibit—

Mr. Todarelli: Are those in evidence?

Mr. Hilly: Yes, Mr. Todarelli.

Mr. Todarelli: Those are the slips?

Mr. Hilly: From the Red Top Bag & Baggage Company. Those are in evidence, sir.

1152 And on Government's Exhibit 8-B appears the number 536757. Then on Government's Exhibit 8-A appears the number 559035.

The Witness: That is correct.

Q. Those were the baggage numbers that were checked through on those tickets? A. That is correct.

Q. Now, can you tell me what this is, Mr. Salembier? A. That is a declaration of value slip showing the value of the baggage checked as well as the check numbers.

Q. And when was this slip prepared? A. October 11, 1941.

*A. C. Salembier, for Gov't, Direct.*

Mr. Hilly: I am offering this in evidence, Mr. Todarelli. 1153

Mr. Todarelli: I don't know what these names are.

Mr. Hilly: Pardon me?

Mr. Todarelli: They certainly are not part of it, are they?

Mr. Hilly: I have no objection to covering that up.

Mr. Todarelli: Do they mean anything to you?

Mr. Hilly: Nothing, unless they mean something to you. 1154

Mr. Todarelli: They don't mean a thing to me.

Mr. Hilly: I will consent to the back being covered up when these are shown to the jury.

Mr. Todarelli: If they don't mean anything there is no need of doing that.

The Court: Let me see them, please.

Mr. Hilly: Yes, sir (handing to Court).

Mr. Todarelli: Subject to connection I have no objection.

The Court: They may be received and marked as an exhibit. 1155

(Marked Government's Exhibit 21.)

Mr. Hilly: With your Honor's permission I would just like to read Government's Exhibit 21 to the jury (reading exhibit).

Q. Now looking at this sheet of paper, can you tell me, sir, what that is? A. That is a regular checking sheet used in the course of business every day.

Q. And it is part of the regular course of the business



*A. C. Salembier, for Gov't, Direct.*

1156 of the Pennsylvania Railroad to keep and maintain such a record, is that correct? A. It is.

Mr. Hilly: I will offer this in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It may be received and marked as an exhibit.

(Marked Government's Exhibit 22:)

Mr. Todarelli: Subject to connection, of course, your Honor.

The Court: Yes.

1157 Q. Now, when was that record prepared, Mr. Salembier?  
A. On October 21, 1941.

Q. And does that record show a checking of baggage through on ticket 32567 for Miami, Florida? A. It does.

Q. And were those pieces of baggage assigned check Nos. 559133, 536876, 77 and 78? A. They were.

Mr. Hilly: I am now reading, ladies and gentlemen of the jury, from Government's Exhibit 8-C in evidence: 536877, 78, 76, and 559133.

Q. Now can you tell me what this is, Mr. Salembier?

1158 A. That is the declaration of value slip showing the value declared on baggage checked.

Q. And this is a record of the Pennsylvania Railroad kept in the regular course of business, is it? A. It is.

Q. And it is part of the business of the Pennsylvania Railroad to keep such a record, is that correct? A. It is.

Mr. Hilly: I will offer this in evidence.

Q. Looking at the numerical No. 2 that appears up there do you know what that is for? A. I do. That is the second transaction that day of the baggage check man, indicating two here and two on there (indicating).

*A. C. Salembier, for Gov't, Cross.*

Q. That is the second transaction that he had? A. That is right. 1159

Mr. Todarelli: Subject to connection I have no objection.

The Court: It may be received in evidence.

(Marked Government's Exhibit 23.)

Mr. Hilly: With your Honor's permission Government's Exhibit 23 in evidence reads Valuation of baggage October 21, 1941; the property covered by checks Nos. 5559133, 536876, 77, 78, is valued at not exceeding \$25. Signed Al Kay, 1451 Broadway, New York City. 1160

If your Honor pleases, at this time I have no further questions of this witness, and I respectfully submit to the Court that all of the records in connection with the Pennsylvania Railroad have been connected.

CROSS EXAMINATION by Mr. Todarelli:

Q. Will you please tell me your name? A. You can say Gus if you want to rather than the last name, Salembier, if you want.

Q. My name is Todarelli and we both have the same trouble. A. Fine.

Q. Mr. Salembier, I am holding in my hand Exhibit 20. Now, of course, the testimony that you gave is merely from these records? A. That is correct. 1161

Q. A man comes in with a ticket to weigh some baggage and says: "Here is a ticket for Miami. I would like to check my baggage through", and you make a record of the ticket number and the number of pieces of baggage, and then you put a tag on each one, and the number that appears on the tag is put on here, isn't that right? A. In addition to taking that declaration of value slip.

*A. C. Salembier, for Gov't, Cross.*

1162

Q. And then you say to him, "I want you to write out"

— A. He makes it out first.

Q. He makes it out first? Well, all right, and then gives you that declaration of value, and then you put the baggage somewhere, and send it out on some train or other?

A. That is correct.

Q. It is not unusual, is it, for a man to come up with his baggage a few days ahead of the time, or ahead of the day he is leaving and checking his baggage through? A. You have that privilege.

1163

Q. Now, there is only one thing I don't quite understand. Do you remember that you testified that somebody came up, and I am now reading from Exhibit 20— A. Yes.

Q. —with ticket numbers 19743? A. Yes.

Q. And '744 and 32500, right? A. That is correct.

Q. And checked five pieces of baggage? A. That is right.

Q. You skipped from 536,755, '5, '6 and '7, to 559,035. Can you tell me why that was? A. It could be that another checkman was checking baggage and that the passenger wanted an additional piece of baggage checked after the four were asked for, and he would take the next check that

1164

would be available.

Q. Well, when it is checked isn't it put on this sheet right away? A. Oh, yes, as soon as the check is issued you mark against it.

Q. That is what I say. So he would not jump from 536,754 to 559,035, would he? A. Oh, he could, yes, sure because the checks are not assigned to you or I. They are assigned to whoever uses them. In other words, there may be six or seven men checking the baggage.

*A. C. Salembier, for Gov't, Cross.*

Q. Oh, I see. A. And they take any check available. 1165

Q. Well, that is all that means? A. That is right.

Q. That all five pieces were checked at the same time?

A. That is correct.

Q. And then on October 21st somebody came up with four pieces of baggage and checked those four pieces of baggage on ticket No. 32567? A. That is correct.

Q. Is that right? A. Yes.

Q. Now, am I correct in saying that that was done at 3:30 in the morning? A. That is correct, that is right.

Q. The date here is October 21st? A. That is right.

Q. Did that date start at midnight? A. Midnighnt, 1166  
that is correct.

Q. And this sheet starts at midnight, doesn't it? A. Midnight as on the 21st, not the 20th. That would be the 21st.

Q. All right. In other words, the minute that 12 o'clock comes you start a new sheet? A. As of 12:01 a. m.

Q. As of 12:01 a. m.? A. And that man's tour of duty would be from midnight to 8 a. m.

Q. All right. And referring to Exhibit 20 again, those five pieces that I was talking about a little while ago— A. Yes. 1167

Q. They were checked at 1:35 in the afternoon? A. That is correct.

Q. Is that right? A. Yes.

Q. That is afternoon, isn't it? A. That is right, because that man worked from 8 to 4.

Mr. Todarelli: That is all.

*A. C. Salem for Gov't Redirect, Re-cross*

1168

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. Just one question, please. Government's Exhibit 21 in evidence, that was prepared by the passenger checking the baggage, is that correct? A. Only in so far as the valuation and the signature.

Q. And Government's Exhibit 23 was prepared by the passenger, is that correct? A. In so far as the value and the signature.

Q. And it was prepared at the time the baggage was checked, is that correct? A. That is correct.

Mr. Hilly: I have no further questions of this witness.

1169

RE-CROSS EXAMINATION by Mr. Todarelli:

Q. I just have one more question, if I may. Now, the baggage that was checked on October 21st, the four pieces of baggage that were checked at 3:30 in the morning— A. Yes.

Q. —October 21st were checked on this ticket, weren't they, 32567? A. That is right.

Q. The one that called for passage on November 25, 1941, is that right? A. That was sold for use on that date.

1170

Q. Yes, that is what I say. A. But I am not conversant with ticket selling.

Q. But I say they were checked on those tickets. There is no doubt about that? A. That is right, they were.

Mr. Todarelli: That is all.

Mr. Hilly: No further questions. Thank you.  
(Witness excused.)

The Court: We will take our morning recess.  
(Short recess.)



*S. Levenson, for Gov't, Direct.*

SAMUEL LEVENSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1171

Direct Examination by Mr. Hilly:

Q. Mr. Levenson, what is your occupation? A. Furniture manufacturer.

Q. And where are you engaged in business? A. In Baltimore.

Q. And do you know a man by the name of Alvin Kay? A. Yes, sir.

Q. And is he related to you, sir? A. Yes, sir, he is my wife's sister's son. 1172

Q. So, he is your nephew? A. That is right.

Q. Now, let me direct your attention to the date of October 21, 1941. At that time did you see Alvin Kay in Baltimore, Maryland? A. Yes, sir.

Mr. Todarelli: May we approach the bench?

The Court: Yes.

(The following occurred at the bench without the hearing of the jury):

Mr. Todarelli: An objection is made to the testimony of this witness on the ground that the evidence which he will give is based upon information received from papers found in the search of December 6, 1941. 1173

Mr. Hilly: If your Honor pleases, the Government's position is that this witness was not located from the information given or obtained on December 6, 1941, but was obtained as a result of conversations had with the defendant Rose Sodikerman, and with the witness Mrs. Sorrentino.

The Court: With that assurance I will permit the testimony.

*S. Levenson, for Gov't, Direct.*

1174

Mr. Pinto: May we state for the record that among the papers seized were these bills of furniture from this witness, covering furniture sold (by this witness to the defendant, and we claim that that was the direct lead how the FBI and the Government got to this man. There is no doubt about that, Mr. Hilly.

1175

Mr. Hilly: There is no doubt about that, that at the time of the search and seizure there were certain files and records which were in the possession of Krulewitch and which were seized on December 6, 1941, and those very same records your Honor has now ordered impounded, I think it was the day before yesterday.

1176

We maintain, as I have previously stated, that this lead on this witness was obtained through Betty Sookerman or Rose Sookerman, when a statement was obtained from her.

Mr. Pinto: What is the date of that?

Mr. Hilly: Upon her arrest in Miami. I don't know the exact date, and rather than there be any error I will state that the date was subsequent to December 6, 1941 and, as your Honor knows, the conversations with the witness Sorrentino in which he told us about this witness was likewise subsequent to December 6, 1941.

The Court: Well, then, on your statement as to this witness that you got the name of this man and his address from these witnesses and were able to locate him on evidence other than seized evidence, I will permit the testimony.

Mr. Hilly: Yes, your Honor, the defendant Sookerman gave his name and his address.

*S. Levinson, for Gov't, Direct:*

The Court: Well, all right.

1177

Mr. Pinto: I think you ought to produce that statement, if the Court please. I do not think we have a right, representing this defendant, to rely on that statement of the District Attorney. If he has a statement of Sookerman I feel that he ought to produce it.

The Court: Can you?

Mr. Hilly: Your Honor, I haven't got the original statement—wait a minute. I can get the original statement from the FBI.

Mr. Pinto: Your Honor—

1178

The Court: Wait a minute, please, not two at a time.

Mr. Hilly: I have not got the original statement, but I have the statement as set forth in an FBI arrest report which came from Miami, Florida. If your Honor wants that and if you will grant me a two-minute recess I will go down to the office and find it.

The Court: No, on your assurance I will permit the testimony.

Mr. Pinto: Exception.

(The following proceedings took place in open court):

1179

Mr. Hilly: Would you read the last question, please.

(Question and answer read.)

Q. And was that on November 21, 1941? A. Yes, sir.

Q. Do you recall at or about what time that you saw him on that day? A. It was rather late in the evening. It was about I would say probably 6:30 or 7 o'clock, somewhere around that time.

*S. Levenson, for Gov't, Direct.*

1180 Q. And did he come into your place of business? A. Yes.

Q. And did you have a conversation with him? A. Yes, sir.

Q. Do you recall the conversation that you had with him? A. Well, he said that he wanted to buy some furniture for some hotel in Florida.

Q. Did he buy furniture? A. Yes.

Q. Now, these papers that are before you, are these the— A. This is the order that I made out for him.

1181 Q. Is that in your handwriting? A. Yes, that is my handwriting.

Q. And that is a record kept by you in the regular course of your business, is that correct? A. That is right.

Q. And it is part of the regular course of your business to keep such a record, is that right? A. That is right.

Q. And with respect to all these records, were all these records prepared by you? A. Yes, sir, those are the shipments, the bills of lading, and this is the invoice of the transaction (handing to Mr. Hilly).

1182 Mr. Hilly: I will offer these in evidence, Mr. Todarelli.

Mr. Todarelli: May I ask a preliminary question?

The Court: Yes, certainly.

By Mr. Todarelli:

Q. Were all these papers, Mr. Levenson, kept by you? A. In our office.

Q. In your office I mean. A. Yes, sir.

Q. All of them? A. Yes, sir.

Mr. Todarelli: Subject to connection I have no objection.

*S. Levenson, for Gov't, Cross.*

The Court: They may be received and marked as 1183  
an exhibit.

(Marked Government's EXhibit 24.)

Mr. Hilly reads Government's Exhibit 24 to the  
Court and jury.)

By Mr. Hilly:

Q. The price was \$283, is that correct, Mr. Levenson?

A. Yes, sir.

Q. And who paid for the furniture? A. Mr. Alvin  
Kay here.

Q. And was it paid in one payment or were there two  
payments that were made? A. I don't recall that exactly. 1184  
how that was, but I know it was paid in full.

Q. It was paid in full? A. Yes, sir.

Q. How do you know that it was paid in full? A. Well,  
at the time that I recall there was some money paid cash,  
and I think—I see here there was \$150 paid cash and the  
balance I don't remember just how that was paid, whether  
it was paid by check or whether it was paid by cash.

Q. In any event, payment for the furniture was made to  
you by your nephew? A. Yes, sir.

Mr. Hilly: I have no further questions of this  
witness. 1185

CROSS EXAMINATION by Mr. Todarelli:

Q. Now, Mr. Levenson, just where is your place of bus-  
ness? A. In Baltimore.

Q. Where in Baltimore? A. It is No. 8 North Fred-  
erick Street.

Q. Is that in the business section of Baltimore? A.  
Right in the business section of Baltimore.

Q. And about how far from the railroad station is that?



*S. Lervenson, for Gov't, Cross.*

1186 A. Oh, it is quite a considerable distance from the railroad station.

Q. Now, the Pennsylvania Railroad Station? A. Well, you mean in the number of blocks or distance?

Q. Well, have you ever traveled by cab to the Pennsylvania Railroad Station? A. Yes, sir.

Q. Many times? A. Yes, sir.

Q. About how long or, let us say at about 6 o'clock in the evening, would it take you to go— A. Well, I imagine it would take about 20 or 25 minutes.

1187 Q. All right. Now I show you these photographs and I ask you if they are a fair representation of the building in which your business was as of October, 1941? A. Exactly.

Q. And this one? A. Yes, sir.

Q. And this one? A. Yes, sir.

Q. And does this show your building also, and also the corner building? A. Oh, I see, yes, sir, that shows the corner building, and we are right next to the corner. Let us see, now, yes, sir, we are right here—no, right here (indicating).

Q. Do you see that sign? A. Yes, sir, that is at our building.

1188 Q. All right. A. Oh, yes, I see that now, yes, sir.

Mr. Todarelli: I offer these in evidence.

Mr. Hilly: When were they taken?

Mr. Todarelli: They were taken recently, but I asked him if they were a fair representation of the building.

Mr. Hilly: I would like to have the date when they were taken.

Mr. Todarelli: Oh, yes, here it is. February, 1947, presumably, because the envelope is postmarked February, 1947.

*S. Levenson, for Gov't, Cross.*

Mr. Hilly: I object to that, your Honor.

1189

The Court: Well, the witness has testified that they fairly represent the condition of his premises at this time in October of 1941 as I so understood.

Mr. Hilly: Yes, I so understood.

Mr. Todarelli: Yes.

The Court: They may be received and marked as exhibits.

(Marked Defendant's Exhibits U-1, U-2, U-3 and U-4.)

Q. Then, Mr. Levenson, this photograph, U-3 shows a building or, rather, a sign, the Textile Mills Products Com-

1190

pany? A. Yes, sir, that is on the first floor.

Q. On the first floor? A. Of our building, and we occupy the premises all above the first floor.

Q. And just left of that store or establishment of the Textile Mills and on the ground floor— A. That is right.

Q. —is a door? A. That is right, and this is our entrance right here (indicating).

Q. Yes, sir. Now, you go upstairs then? A. To our place.

Q. And how many floors do you have? A. We have four floors.

1191

Q. And is there any display window in your stores? A. No, sir.

Q. Standing on the street can you see furniture on display? A. You cannot, no, sir.

Q. In your place of business? A. No, sir, we don't display any furniture excepting samples in the rear of the building.

Mr. Todarelli: May I show these to the jury, your Honor?

*S: Levenson, for Gov't, Cross.*

1192

The Court: Yes.

Mr. Todarelli: These ladies and gentlemen, the Textile Mills, and Mr. Levenson testified that to the left of it is the doorway that leads up to the four floors which he says comprises the building.

Q. Looking at the papers that comprise Exhibit 24—

A: Yes.

Q. —are you able to tell me what Mr. Kay bought? A. Yes, sir, he bought four pieces of furniture, a sofa and three chairs—now, let us see. There was more than that. There were two sofas and six chairs.

1193

Q. I have always wanted to know, Mr. Levenson, how you pronounce the name suite. Is that suite or suite? A. Suite, we call it suite.

Q. Suite? A. Yes, sir.

Q. In other words, a living room suite? A. That is right.

Q. How many living room suites did Mr. Kay have according to this invoice? A. It looks like he bought one—two living room suites.

Q. Do these papers show when the merchandise left your store? A. Yes, sir, according to the bill of lading

1194

here it would show that it was shipped on October 23, 1941.

Q. All of it? A. No, sir. There was three pieces shipped according to this on October 10, 1941.

Q. October what? A. 1941.

Q. October what? A. October 10.

Q. 10? A. No, October 23, I beg your pardon.

Q. <sup>2</sup> Yes. A. And then there was the balance that was shipped on November 7, 1941.

Q. And do these papers further tell you when it was

*S. Levenson, for Gov't, Cross.*

livered at its destination in Florida? A. Well, I wouldn't be able to know that. 1195

Q. Well, look through the papers and see if there is anything to indicate that. A. No, there is nothing here to indicate that when it was delivered there.

Q. All right. What do those last two sheets mean with a large stamp entered. Does that mean that it is entered in your books, the two bottom sheets, Mr. Levenson? A. The two bottom sheets?

Q. I think there are two and there is a large stamp "Entered". A. Yes, sir. Well, now, these are the orders — evidently these are the orders as they were written up and they were entered for shipment. 1196

Q. Do you mean entered in your books; or what do you mean by entered for shipment? A. Well, I would think that it was entered for to be charged.

Q. Well, an entry made in your books, is that what you mean? A. That is the idea.

Q. And how were they shipped? A. How were they shipped?

Q. Yes. A. They were shipped by the Pennsylvania Railroad, weren't they? It looks like it to me. Merchants & Miners Transportation Company; that is the steamboat line that used to take freight to Florida from Baltimore. 1197

Q. They were both shipped, or both shipments, the one of October 23 and the one of November 7? A. Yes, Merchants & Miners Transportation Company. That is the steamship line from Baltimore that used to go to Florida and that has since gone out of business.

Q. But in those days did you ship that way? A. Yes. We invariably shipped that way to Florida.

Q. And what was the average time that it took for that

*S. Levenson, for Gov't, Cross.*

1198 shipment to reach its destination? A. I really couldn't say.

Q. You couldn't say in number of day? A. No, sir. I would think it would get there about in a week or so, I think.

Q. Now, furniture was plentiful in 1941— A. In those days.

Q. —than it is now? A. Yes, sir.

Q. Was there a lot of furniture in your place then? A. Yes, sir, quite a lot.

1199 Q. You said on direct examination that Mr. Kay got there about 6:30 or 7? A. Yes, sir. I was ready to go home, I remember, going to dinner, and, in fact, I wanted him to go along and have dinner with me.

Q. And what did he say? A. He said that he was—that he had to make a train or something, that he couldn't very well make it then.

Q. And about how long would you say he stayed at your place? A. Oh, I think about half an hour or so, maybe a little longer.

Q. Did you leave with him? A. I don't recall whether I left with him or not.

1200 Q. Did Mr. Kay tell you that he was going to Florida, do you remember? A. I don't recall.

Q. Did he tell you that he was going to get married? A. Yes, yes, he told me that.

Q. Did he tell you that? A. That is right, he told me that.

Q. Did he tell you that that was one of the reasons he wanted to buy the furniture? A. I think that is what it was. That is what he told me I think.

Q. Kay is your nephew, isn't he? A. That is right.

Q. How? A. My wife's sister's son.



*S. Levenson, for Gov't, Cross.*

Q. A nephew by marriage? A. That is right, by marriage. 1201

Q. Have you known him for many years? A. All my life.

Q. Did you know— A. Well, I mean all of his life, rather.

Q. Yes. Did you know what business he was in in 1941? A. Due bills I understand.

Q. Did you see him often? A. Yes, I used to see him occasionally when I would get the time, when I had the time.

Q. Oh, yes. Did Mr. Kay ever buy any other furniture from you? A. Yes, sir, he bought some furniture for the Chamberlain Hotel in Virginia. 1202

Q. I suppose you gave him a special price? A. Yes, sir.

Mr. Todarelli: All right, that is all.

Mr. Hilly: Thank you, Mr. Levenson. I have no further questions.

(Witness excused.)

Mr. Hilly: If your Honor pleases, at this time with the exception of the one witness that will be available on Monday the Government rests its case. 1203

The Court: Will you come to the bench, please?

Mr. Hilly: Yes, your Honor.

(Discussion at the bench, not in the hearing of the jury.)

The Court: The Court will now recess until Monday morning until 10:30.

(Adjourned to April 21, 1947, at 10:30 a. m.)

*L. H. Rumans, for Gov't. Direct.*

1204

New York, April 21, 1947,

10:30 o'clock a. m.

Trial resumed.

LEON H. RUMANS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Rumans, what is your occupation? A. Special Agent, Federal Bureau of Investigation.

Q. And you are presently attached to the New York field office? A. Yes, sir.

1205

Q. On December 17, 1941, were you attached to the New York field office? A. Yes, sir.

Q. I direct your attention to the signature Alvin Kay which appears on this sheet of paper, and ask you if that was affixed to that paper in your presence? A. Yes, sir, it was.

Q. And when was it affixed? A. The night of December 17th here in this building.

Q. And do you see Alvin Kay in court? A. Yes, sir, I do.

1206

Mr. Hilly: I offer this sheet of paper in evidence only with respect to the signature (handing to Mr. Todarelli).

Q. I show you this sheet of paper and direct your attention to the signature Alvin Kay that appears on that, and ask you if that signature was affixed in your presence? A. Yes, it was.

Q. And that was affixed by the defendant Kay, is that correct? A. Yes, sir.

Mr. Hilly: I offer this sheet of paper, Mr. Todarelli only with respect to the signature (handing to Mr. Todarelli).

Mr. Todarelli: We concede that these papers reflect the signature of the defendant.

*L. H. Romans, for Gov't, Cross.*

The Court: Very well. They may be marked as exhibits. 1207

(Marked Government's Exhibits 25 and 26.)

Mr. Hilly: I have no further questions of this witness at this time.

The Court: I assume that this offer is for the purpose of the handwriting, is that right, Mr. Hilly?

Mr. Hilly: That is correct, your Honor.

The Court: Well, then, when the exhibits go to the jury all the other matters on the papers will have to be obliterated.

Mr. Hilly: They will very definitely, your Honor. 1208

Mr. Todarelli: I should think it might be the better plan in view of the concession to have them merely marked for identification, and then a handwriting expert when he is called, or anybody else, can say that he compared the genuine signature which we have conceded on Government's Exhibits numbers so-and-so for identification, and he finds them to be similar.

Mr. Hilly: I have no objection to that procedure.

Mr. Todarelli: And I suggest that they merely be marked for identification. 1209

The Court: Very well. They will be marked for identification.

(Government's Exhibits 25 and 26 previously received in evidence now marked Government's Exhibits 25 and 26 for identification.)

CROSS EXAMINATION by Mr. Todarelli:

Q. Do you remember a day in May, 1943, when the defendant was arrested? Do you?

*L. H. Rumans, for Gov't, Cross.*

1210

Mr. Hilly: Objected to, if your Honor please, as not proper cross examination.

The Court: You are making the witness your own witness on this, Mr. Todarelli.

Mr. Todarelli: I know.

The Court: Very well. Go ahead.

A. Mr. Todarelli, I arrested Mr. Kay in December, 1941, and again in December, 1942, not in '43.

Q. And not in '43? A. No, sir.

Q. Did you have anything to do with the intimidation charge on which he was arrested in May, 1943? A. No, sir.

1211

Q. You had nothing to do with that? A. I didn't arrest Mr. Kay, no, sir.

Q. Did you ever take a statement, or were you present at any time when a statement was taken from Mrs. Sorrentino in connection with that arrest of the defendant or intimidation of the Government witness? A. I don't recall having been present, no.

Q. Have you ever seen such a statement in the files? A. I don't believe I have, no, sir.

1212

Q. Have you ever seen a paper in the files purporting to be a copy of a telegram sent to the defendant from Florida about November 8th or 10th, 1941? A. Yes, sir. I don't know as I saw the copy. I either saw a copy of it, or one of our records from the Miami field division reflecting that there was a telegram sent sometime during November, 1941, by either Joyce Winston or Pauline Hillson. I couldn't—I don't know which one sent it.

Mr. Todarelli: Do you have that, Mr. Hilly?

Mr. Hilly: I have the report, yes, sir.

*L. H. Romans, for Gov't, Cross.*

Mr. Todarelli: No. Do you have that copy of that telegram? 1213

Mr. Hilly: No, I haven't got the telegram, no.

Q. Are you able to state from your recollection what the telegram said? A. Words to this effect; that it happened; call immediately, or call some—words to that effect.

Q. And that was about November 8th or 10th? A. Sometime during November, 1941.

Mr. Todarelli: May I see the report then so that I can ask him to refresh his recollection?

Mr. Hilly: No, you cannot see the report.

Mr. Todarelli: May I ask that the report be given to the witness so that he may refresh his recollection? 1214

The Court: Is there any objection to that?

Mr. Hilly: Oh, yes, I do have objection to that, because if I show the witness the report to refresh his recollection, if his recollection needs to be refreshed, then since the witness looked at the document to refresh his recollection, Mr. Todarelli will then claim he is entitled to it and may say that the report properly refreshed his recollection.

The Court: Well, I shall limit it only to the copy of the telegram and nothing else that is contained in the report. 1215

Mr. Hilly: Do you want to come up to the bench?

(Discussion at the bench outside of the hearing of the jury.)

Mr. Todarelli: So that this won't appear to be mysterious, what I wanted was an exhibit marked for identification by Mr. Hilly, and my recollection so that exhibit was marked by Mr. Hilly for identification, and I think in this connection that he mentioned that—



*L. H. Rumans, for Gov't, Re-direct.*

1216

The Court: I have no recollection on that one way or the other.

Mr. Hilly: I have the exhibit and it was not marked for identification.

Mr. Todarelli: That is the one I had in mind, that is all.

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. What was that date of the telegram, Mr. Rumans?

A. November 11, 1941.

Q. And what did the telegram say?

1217

Mr. Todarelli: I object to that, your Honor. I object to that. It is immaterial.

The Court: Well, that already appears, doesn't it? The witness has testified to that.

Mr. Todarelli: I merely asked him—I merely wanted the date, and that is the only purpose, as that is the one that he said he couldn't identify, and that is the only purpose that it was used for.

The Court: All right. I will sustain the objection.

1218

Mr. Hilly: If your Honor please, I just want to find out in view of Mr. Todarelli's questions what was contained in the telegram, and Mr. Todarelli specifically asked this witness, your Honor—

The Court: The witness has already testified what the telegram contained.

Mr. Hilly: Very well.

The Court: Mr. Todarelli, hasn't the witness already testified to what he recalls the telegram contained?

Mr. Todarelli: Yes.

*L. H. Rumans, for Gov't, Re-direct.*

The Court: All right. I will let him answer the question as to what the telegram contained. 1219

Q. What did the telegram contain? A. It happened immediately. Important. Signed Joyce and Betty.

Mr. Todarelli: Well, I would like to ask Mr. Hilly is the exhibit which I think was marked for identification and pieced together a report at the time of your investigation?

Mr. Hilly: There was no such report marked for identification in this case, if your Honor please.

The Court: All right.

Mr. Todarelli: I saw it, your Honor. 1220

Mr. Pinto: It was shown to us.

Mr. Todarelli: I saw it.

Mr. Hilly: That is right. It was shown to Mr. Todarelli. It was laying on the desk here.

Mr. Todarelli: That is what I want.

The Court: I will sustain the objection.

Mr. Todarelli: I will concede that this document that Mr. Hilly shows me contains the signature of the defendant, Alvin Krulewitch.

Mr. Hilly: Not the signature, the signatures.

Mr. Todarelli: All right, signatures. 1221

Mr. Hilly: Only for that purpose.

Mr. Todarelli: Only for that purpose.

Mr. Hilly: Will you have it marked for identification, or have it deemed to be marked, as this is a record of the Court, your Honor?

(Deemed marked Government's Exhibit 27 for identification.)

(Witness excused.)

*H. Dahlgren, for Gov't, Direct.*

1222 HILDING DAHLGREN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Dahlgren, what is your occupation? A. I am a special agent of the Federal Bureau of Investigation.

Q. And how long have you been so employed? A. Approximately five years.

Q. And what is the nature of your work? A. I am assigned to the F. B. I. laboratories as an examiner of questioned documents.

1223 Q. Of what colleges are you a graduate? A. I am a graduate of Gustavus Adolphus College; that is located at St. Peter, Minnesota.

Q. State what you have done in a special way to prepare yourself for the work of document identification. A. My special training for this kind of work was pursued in the F. B. I. laboratories where I studied various books on the subject, attended numerous lectures and conferences, and worked on actual cases involving handwriting problems.

1224 Q. Are you assigned to a full time examination of questioned documents? A. Yes, sir, I am.

Q. Approximately how many cases have you examined? A. Oh, approximately 5,000 cases involving thousands of questioned specimens.

Q. And have you ever qualified and testified as a handwriting expert in court? A. Yes, I have.

Q. Will you look at Government's Exhibits 21, 23 and 19-C in evidence, and I ask you if you have examined those documents?

*Discussion.*

Mr. Todarelli: If Mr. Hilly will tell us what he wants or what he expects to prove we may save time of the Court and jury— 1225

Mr. Hilly: Positively. I have no objection to that.

Mr. Todarelli: By conceding the genuineness of certain signatures.

Mr. Hilly: That is right. I just want to prove that the signature of Alvin Kay appearing on 19-C, 24 and 23 was written by Alvin Kay.

Mr. Todarelli: So conceded.

Mr. Hilly: No further questions of this witness then. 1226

Mr. Todarelli: That is all.

Mr. Hilly: If your Honor pleases, at this time the Government rests its case.

The Court: There are motions, Mr. Todarelli?

Mr. Todarelli: Your Honor—

The Court: If there are I want to excuse the jury.

Mr. Todarelli: That is what I was going to say.

The Court: The jury may be excused until you are called by the marshal. 1227

(At this point the jury was excused and the following proceedings took place in the absence of the jury):

Mr. Todarelli: May it please your Honor, before proceeding with the motions I should like to call your attention to some unfinished business, so to speak.

You may recall that we had several conferences at the Bench during the course of the Government's

*Discussion.*

1228

direct case, and I asked Mr. Hilly for the statements that Joyce made at the time that she filed this charge of intimidation in May of 1943, and Mr. Hilly said that he would produce that statement if he could find it. Then I also asked for the statement of the FBI, the statement taken from Rose Betty Sookerman by the FBI in which the woman Sookerman gave information as to Sam Levinson, because, as I argued, the testimony of Sam Levinson was the direct proof of the illegal search and seizure which your Honor suppressed.

1229

Those are the two statements that I asked for and I now ask the Government to produce those statements.

Mr. Hilly: If your Honor please, with respect to the witness Sorrentino on the intimidation, I am not able to find any statement in the FBI file. Now, I thought I had made that point clear when the request was made of me by Mr. Todarelli. So far as I have been able to ascertain there is no statement in the FBI file on the so-called intimidation portion of this case.

1230

Now, with respect to the witness Rose Sookerman, the statement that was made in Miami, Florida, is unsigned, but there is an FBI report dated 12-8-41 from Miami, Florida, for a period made from December 3rd to December 6th, 1941, by Special Agent J. M. Lopez of the Miami, Florida, office, and that is the report that sets forth the facts that a complaint was filed in Miami, charging Krulewitch with the crime of transportation of this woman in interstate commerce, and I want to point out to your



*Discussion.*

Honor that this report was made in Miami at a time prior to the apprehension here in New York of Alvin Kay, and this report establishes beyond any doubt that the FBI at that time prior to the arrest of Krulewitch in New York knew about the place in Baltimore. 1231

The report reads, and I am reading from page 11 of that report, your Honor,—

The Court: Just a moment. As I understand it, all that Mr. Todarelli is asking for is the statement made by Joyce to somebody, and a statement made by Sookerman to somebody, is that right? 1232

Mr. Todarelli: That is correct, your Honor.

The Court: What materiality would the statement from Sookerman have here, Mr. Todarelli? She has not been a witness:

Mr. Todarelli: At the time, your Honor, that the witness Levenson took the stand, it is my recollection that we came to the bench and I objected to his testimony on the ground that the evidence that Levenson would give was based upon information obtained from search and seizure.

The Court: Yes. 1233

Mr. Todarelli: Mr. Hilly then said we knew about Levenson because Sookerman had made a statement down in Florida, and it was she who gave the lead as the result of which the agents went to see Levenson.

Now I say that, your Honor, is material here as to whether or not Sookerman, as Mr. Hilly says, gave the agents the lead to go to Levenson.

The Court: Well, that is a matter for you to argue. I admitted the testimony of Mr. Levenson on the

*Discussion.*

1234

assurance that Mr. Hilly said that the evidence was obtained other than from the search and seizure.

Mr. Hilly: That is correct, your Honor, indeed, and I am prepared to point that out.

Mr. Pinto: But, your Honor, you will recall that we said that if Mr. Hilly could produce that statement it would verify that fact.

The Court: No. As I recall it, you asked me to compel him to do it and I declined to do so. I said I would take his word for it.

1235

Mr. Pinto: That was on another phase, your Honor.

The Court: That was on the Levenson matter.

Mr. Pinto: My recollection is that we left it on the condition that the statement of Joyce was to be produced.

The Court: You say you have not the statement?

Mr. Hilly: No, your Honor, I have no statement of Joyce, your Honor.

The Court: Then you are unable to produce the statement?

Mr. Hilly: That is correct.

1236

The Court: Then your motion as to the Sookerman statement is overruled.

Now, go ahead with your other motion, Mr. Todarelli.

Mr. Todarelli: You mean the Joyce statement?

The Court: No, the Sookerman statement. He said he is unable to produce any statement of Joyce and that ends that. I am not interested in any statement from Sookerman.

*Discussion.*

Mr. Todarelli: I see. Your Honor, may I press the Joyce part just for one moment, please? 1237

The Court: Yes, certainly.

Mr. Todarelli: On May 27, 1943, in this court Mr. Hoaglund, the agent of the FBI who sits here, signed a complaint, as a result of which the defendant was arrested. Now, certainly Mr. Hoaglund would not have signed such a complaint had not Joyce given him a statement, and I think it is fair for me to ask Mr. Hoaglund at this time if a written statement was obtained from Joyce at that time.

The Court: Was it, Mr. Hoaglund? 1238

Mr. Hoaglund: No, sir, your Honor. The FBI did not take a written statement from Joyce.

Mr. Todarelli: Well, when he says the FBI did not, did anybody connected with the Government take such a statement?

Mr. Hoaglund: To my knowledge they did not. She was questioned, obviously.

Mr. Todarelli: I did not hear the answer. She was what?

Mr. Hoaglund: She was questioned in the United States Attorney's office. To my knowledge no statement was taken. 1239

Mr. Todarelli: Are there any notes anywhere?

Mr. Hoaglund: Well, I would have none.

Mr. Todarelli: Do you know whether you made a report on that?

The Court: Well, we won't go into the report part of it. As long as there was not any written statement, that ends it.

Go ahead with your motion.

*Motions.*

1240

Mr. Todarelli: Before I make the motions I should like to recall the defendant Winston to the stand for just a few questions.

The Court: Who?

Mr. Todarelli: Mrs. Sorrentino. I am perfectly willing to make the motions while the jury is out now and then have them considered after I get through with her as having been made subsequent to her testimony. I will only be a few minutes with the witness.

The Court: Is she available?

1241

Mr. Hilly: Yes, your Honor. I got a telephone call from Mr. Todarelli some time Saturday afternoon at home, on Saturday morning, and he asked me to make her available, and in accordance with my statement to the Court she is available.

The Court: All right. Go ahead with your motion, and it will be considered that the motion was made after the cross examination of the witness Sorrentino.

Mr. Todarelli: Yes, your Honor.

1242

The defendant moves that the indictment be dismissed and that directed verdict of acquittal be ordered by this Court.

As far as we can analyze the testimony here, it is quite clear that the Government does not maintain that Krulwitch took this girl down to Florida for his own personal purposes; I think that the Government will admit that their charge is based upon the prostitution, compulsory commercial prostitution of the witness Sorrentino down there in Florida at the behest of and through the efforts of the defendant.

*Motions.*

Therefore, the technical violation, if any indeed existed, is whether or not he took her down there for his own purposes, for his own purposes of having relations with her. I think is out of the case. 1243

The Court: That is not even charged in the indictment.

Mr. Todarelli: Well, it could be spelled out.

The Court: The indictment charges that she was taken there for the purposes of prostitution, debauchery, or other immoral purposes.

Mr. Todarelli: And the debauchery or other immoral purposes could possibly be held to mean his own personal private purposes. 1244

It is quite clear that there are decisions that hold that way, although as a practical proposition they have not been prosecuted, or at least not here in the Southern District. I merely mention that preliminarily in order that we may dismiss that phase of it from the case and, therefore, narrow the issue down as to whether the defendant transported this girl down to Florida for commercialized vice, and I think it might even be narrowed down further than that as to whether or not he engaged the El Chico Hotel where commercialized prostitution was to take place by this girl. I think that is probably a fair analysis of the charge against this defendant. 1245

Now, we can concede for the purposes of this argument that Kay bought the tickets; that Kay put them on the train; that he arrived there in Florida at or about the time that they arrived there; that he did rent the El Chico Hotel; that they had lived there;



*Motions.*

1246

that they did practice prostitution there. We can concede all of these things for the purposes of this argument, and I say that after you have considered all those things that there is only one single solitary witness in this case who proves that Kay knew what was going to be done, knew what was going to be done and acquiesced in it and brought it about, and that is the witness Sorrentino, the testimony of this witness, Mrs. Sorrentino.

1247

May I point out, your Honor, what the Circuit Court of Appeals said about her, because I think Mr. Hilly would be prepared to concede that the testimony that she gave at this trial was practically the same as the testimony that she gave at the trial before Judge Porterie:

"Joyce herself was shown to be to the last degree untrustworthy."

1248

Now, that, your Honor, was said by the Circuit Court of Appeals, and if your Honor does not grant my motion you are saying in effect to the jury that the jury has a right to consider whether she has told the truth, because I do not know of a single scintilla of evidence except one, and I will come to that in a moment, outside of this story that this girl tells on the witness stand that places this man in jeopardy.

Your Honor has the power to pass upon whether in your own opinion you think that this girl's testimony is worthy of consideration by the jury. Your Honor has the discretion to say, "I don't believe that girl's story and I am not going to permit the jury to speculate on whether or not it is true."

*Motions.*

The only other bit of evidence in the record is the testimony of Peacock that might possibly be considered as corroborative of the witness Sorrentino's testimony, but all he said was that it was his understanding that a house of prostitution would be carried on there as it was before. He did not give us any conversation that he had with the defendant Kay. He did not give us any other facts whatever except merely that he had a talk with Kay, that Kay told him he wanted to rent the place and he told him where the place could be rented and sent him next door to see the people who lived next door and that is all.

1249

Then Mr. Hilly says, "What was your understanding as to what he was going to do?"

And then out of a clear sky for the first time that he testified in this case, and this is the third time he testified, he says, "It was my understanding that he was going to run a house of prostitution."

1250 +

Now I say, your Honor, and I say it with all sincerity, the testimony of this girl Joyce and the testimony of this man Peacock are not sufficient to place this man in jeopardy by having a jury pass upon his guilt or innocence, and I think that your Honor should dismiss the indictment and direct a verdict of acquittal.

1251

I should also like to renew the motion that was made during the course of the trial for a mistrial on the grounds I have already stated, that serious error was committed in permitting Peacock to testify that it was his understanding that this was going to be used for a place of prostitution.

*Motions.*

1252

I think your Honor would agree with me to this extent, at any rate, that the testimony was very damaging and prejudicial and further if it could be called error that, therefore, it is so damaging that it ought to be the grounds for a mistrial. And on the law that I have submitted to your Honor and on the arguments that I have made, I renew the motion for a mistrial that was made during the course of the Government's direct case.

1253

The Court: Both motions are denied, and it will be understood that the motions were renewed and denied at the end of the testimony of the witness Sorrentino, or at the end of the further cross examination of the witness Sorrentino.

1254

Mr. Todarelli: I should also like to move that the testimony of Levenson be stricken from the record on the ground that the information which led to his discovery as a witness and as to the facts which he gave were taken from papers seized from the defendant on December 6, 1941, and I should like to point out in that regard that Mr. Hilly did concede that there were papers in there indicating that the defendant had visited Levenson at his place of business in Baltimore on October 21.

The Court: That motion is denied.

Mr. Todarelli: And I move also, your Honor, for the striking of the testimony of the defendant Sorrentino when she was asked, "Do you know Belle DeMarco?" And who Belle DeMarco was, on the ground that the name Belle was contained in a letter which Mr. Hilly concedes was taken from the defendant in the search of December 6, 1941.

*Motions.*

The Court: Motion denied.

1255

Mr. Todarelli: Before I make this motion I want to make sure that there is in the record the exemplified copy of the proceedings down in Florida. They are in the record, are they not, Mr. Hilly?

Mr. Hilly: I don't know what proceedings you refer to, Mr. Todarelli.

Mr. Todarelli: The proceedings before Judge Holland down there.

The Court: Well, they were marked B-1 and B-2 in the hearings on the motion.

Mr. Todarelli: And then I think, your Honor, that during the trial they were marked. 1256

Mr. Hilly: They were not marked during the trial.

The Clerk: Not in the trial, but on the hearing for suppression.

Mr. Todarelli: They are now part of the court records, or they are part of the search and seizure question, and your Honor can take judicial notice of the existence of those papers.

The Court: Well, are they part of the court records, or were they exhibits?

Mr. Pinto: They are in evidence. 1257

Mr. Todarelli: They are part of the court records in the court, in the court file.

The Court: If they are part of the court records they do not need to be marked as exhibits.

Mr. Todarelli: I think Mr. Hilly will concede that those papers contain a statement from George Smathers, who was then the United States Attorney in the Southern District of Florida, to the effect that

*Motions.*

1258

he was dismissing without prosecution the charges against the defendant.

The Court: Well, they do contain that statement. I remember that now.

Mr. Todarelli: And in order that there may be no question about it, that is dated February 27, 1942, and it reads:

1259

"To whom it may concern: This is to advise that the undersigned has closed without prosecution the criminal charges against Alvin Kay, W. A., and Joyce Winston, W. A., and the appearance bonds given by the aforesaid may be released and cancelled.

"Signed George A. Smathers, assistant United States Attorney."

1260

In view of the fact that these proceedings were dismissed in Florida I move, your Honor, under Rule 48 of the New Rules of Criminal Procedure that this indictment be dismissed and the verdict of acquittal be directed on the ground that according to that rule, 48-A, the Attorney General of the United States, or the United States Attorney, may by leave of court file a dismissal on the indictment, information or complaint, and the prosecution shall thereupon terminate.

I state, your Honor, that the prosecution of the defendant was terminated on February 27, 1942, and that, therefore, was an end of the proceedings against the defendant Kay, and that this trial places him in jeopardy a second time.

In connection with that motion I should like to read Rule 59, or at least that part of the rule which says:



*Motions.*

"They"—meaning the rules—"govern all criminal proceedings thereafter commenced and, so far as just and practicable, all proceedings then pending." 1261

In other words, the rules apply, if my interpretation is correct, to all pending proceedings as far as just and practicable.

The Court: Motion denied.

Mr. Todarelli: I inadvertently omitted one further motion, your Honor, and that is I maintain that the information as to the trip that the defendant made to Chicago in June of 1939 came from papers in the possession of the defendant which were seized on December 6, 1941, and that the witness Sorrentino was questioned from those papers, and it was only on that basis that the Government was able to ask her those questions and that, therefore, that was the direct fruit of the search. 1262

The Court: Did you raise that objection at the time of the formal offer?

Mr. Todarelli: No, I did not, your Honor, because at that time the search and seizure had not been determined. We had not taken testimony on that. Your Honor will remember, that came in the early part of her direct testimony, and then the trial was interrupted to hear the motion on search and seizure, and after your Honor's ruling was made, then only for the first time could I move to strike out that testimony. 1263

The Court: Are you finished?

Mr. Todarelli: Yes, your Honor.

The Court: Motion denied.

Mr. Todarelli: That is all.

*E. Sorrentino, re-called for Gov't. Cross.*

1264/

The Court: Now we will bring the jury back.

(Whereupon the jury returned to the courtroom and the following proceedings occurred in their presence):

ELIZABETH SORRENTINO, recalled, having been previously duly sworn, further testified as follows:

Further Cross Examination by Mr. Todarelli:

1265

Q. I have just one or two questions to ask, please, Mr. Sorrentino. Did you go to a Dr. Ferguson while you were in Florida for your health? A. Did I what? Go to a doctor for my health?

Q. Dr. Ferguson. Dr. Ferguson. A. Oh, yes. That is where the board of health were to examine me to work in a house. They have a board of health card, and that was to get a board of health card.

Q. Didn't you go down there for the purpose of your bronchial condition? A. No, I didn't.

1266

Q. How long after you arrived there did you go to Dr. Ferguson? A. I don't remember how many days. I know we had to go there before we started working.

Q. You were not going down to Florida to work, were you? A. Yes, I was.

Q. Well, when you speak about work, did you mean prostitution? A. Yes, I do.

Q. You are not trying to tell us that you went to Dr. Ferguson to get a license? A. Yes, I do.

Q. You mean that the City of Miami countenanced this practice and issued health licenses? A. Yes—I don't know if it is the law or anything. I couldn't tell you, but both of

*E. Sorrentino, re-called for Gov't. Cross.*

girls went to him for our board of health cards in case we were arrested, and that is why we had to get it. 1267

Q. You mean that the board of health— A. Yes, I do.

Q. —issues a license, or a card? A. Yes, they do.

Q. A license giving you the power to practice prostitution? A. No, I don't mean that, but they do give you a board of health card because it is an open city, or an open town.

Q. Well, didn't you, as a matter of fact, go to Florida because of a bronchial condition?

Mr. Hilly: Objected to—

A. No, I didn't go— 1268

Mr. Hilly: —as having been answered several times.

The Court: All right. She has answered the question. Read the answer, Mr. Reporter.

(Answer read.)

Q. Were you asked these questions and did you give these answers—

Mr. Todarelli: On page 119 of the second trial.

Q. "Q. Isn't it a fact that the only reason you went to Florida was because you were suffering from a bronchial condition? A. I was suffering from a bronchial condition. 1269

"Q. Wasn't that the only reason that you went to Florida? So far as Al was concerned, didn't he want you to go to Florida to recover your health? A. He said the climate would do me good, yes, and we went down there,

es." A. Naturally, I was down there and—

Q. Were you asked those questions?

The Court: The question is, Mrs. Sorrentino, were you asked those questions?

*E. Sorrentino, re-called for Gov't. Cross.*

1270

The Witness: I went down, your Honor, to Miami, sure. I had been sick a lot in my life, but I went down there for the purpose of prostitution and to open up the El Chico Hotel under Alvin Krulewitch's suggestion.

The Court: Now the question was, Mrs. Sorrentino: At the former trial were you asked those questions and did you make those answers?

The Witness: Yes, if it is there, your Honor, I did.

The Court: All right. The question is answered.

1271

Mr. Todarelli: What was her answer, your Honor?

The Court: She said she did, that she was asked those questions and she did make those answers.

Q. And that was true, wasn't it? A. No—it was true, yes. I was sick, surely.

Mr. Todarelli: That is all I want to know.

Will your Honor entertain a motion to strike the answer she gave before your Honor took over?

The Court: No.

Mr. Todarelli: About going down there for other purposes?

1272

The Court: No, you asked her those questions and she answered.

Mr. Todarelli: I merely asked—

The Court: Motion denied, Mr. Todarelli. Go ahead with your cross examination.

Q. Was there a period of time down there in Florida when you were hemorrhaging? A. Yes, I was sick down there from that, from too much work.

Q. And wasn't that period in the early part of November? A. I don't remember.

*E. Sorrentino, recalled for Gov't. Cross.*

Q. Isn't it a fact that you were hemorrhaging during the first ten days of November down there? A. I know—no, I don't remember that, but I know I did, but it wasn't bad, anything like that. 1273

Q. Did you go to a doctor for that? A. No; when I went to the doctor, Mr. Todarelli, when I went to the doctor I said—Betty said, "Well, it is hard to work here in that condition," and she says, that, "He gives you an injection and he will stop you from flowing like that," if you want the correct answer to that.

Q. I say, did you go to see a doctor about your hemorrhaging? A. No, I didn't. I went—I went there for my board of health card. 1274

Q. Was there another doctor besides Dr. Ferguson? A. Yes.

Q. To whom you went down in Miami? A. A chiropractor, the chiropractor.

Q. And did the defendant take you there at all? A. Yes, h'm, h'm.

Q. He did take you there? A. Yes.

Q. Down in Florida? A. H'm, h'm.

Q. By the way, did you have to go back to Dr. Ferguson after your first visit to him for that health card? A. I don't know if I did or not. I don't remember. I don't think so, yet maybe I did, I think, about a blood test or something. I don't quite remember if I did or didn't. 1275

Q. Well, isn't it a fact that you went back the next day because you had an appointment with him? A. I think we had to get the answers. I am not sure about that, Mr. Todarelli. It was that or something else. I am not sure about that.

Mr. Todarelli: All right. That is all.



*L. Tobkes, for Deft., Direct.*

1276

The Court: That is all, Mrs. Sorrentino.

The Witness: Thank you.

(Witness excused.)

Mr. Todarelli: Are there any other witnesses for the defense in the courtroom?

Well, there is the Western Union man. Do you object to him?

Mr. Hilly: Yes, I think all the witnesses should be excluded.

The Court: Yes.

Mr. Hilly: We ask that all witnesses be excluded.

1277

The Court: Yes, all witness will be excluded.

LOUIS TOBKES, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Tobkes, what is your business? A. Police officer, City of New York.

Q. How long have you been in the Department? A. A little over 20 years.

1278

Q. And were you so employed on November 17, 1943? A. I was.

Q. Do you know a woman by the name of Elizabeth Sorrentino? A. I do.

Q. Did you arrest her? A. I did.

Q. Do you know the defendant Alvin Kay, this man here (indicating)? A. I don't know him.

Q. Did you know him on November 17, 1943? A. No, sir.

Q. Did he have anything to do with the arrest of Elizabeth Sorrentino? A. No, sir.

*L. Tobkes, for Deft., Cross.*

*D. I. Godley, for Deft., Direct.*

1279

Q. Did he give you anything, or say anything to you as a result of which you arrested her? A. No, sir.

Q. Did you know him on that date? A. I did not.

Q. Had you ever seen him, so far as you know? A. No.

Q. Did he have anything to do whatever with the arrest?

A. No, sir.

Mr. Todarelli: That is all.

CROSS EXAMINATION by Mr. Hilly:

Q. Officer Tobkes, what was the disposition of the arrest?

A. The Sorrentino case was dismissed.

Q. It was dismissed? A. Yes.

1280

Mr. Hilly: I have no further questions.

The Court: That is all, Mr. Tobkes.

(Witness excused.)

Mr. Todarelli: Mr. Godley.

7

DANIEL I. GODLEY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Godley, what is your business, please? A. I am in the advertising agency business. 1281

Q. What is the name of your business? A. Sternfield, Godley, Inc.

Q. Just what does your advertising agency do? A. Well, we prepare and place advertising with magazines, newspapers, radio stations, billboard companies.

Q. And how long have you been in that business? A. Since 1917.

Q. Do you know the defendant? A. I do.

*D. I. Godley, for Deft., Cross.*

1282

Q. Have you had any business transactions with him?

A. I have.

Q. Covering a period of how many years? A. Well, off and on. I guess we started doing some business together about 10 or 12 years ago.

Q. And do you know the name of his firm when you were doing business together? A. Well; it was Kay Advertising.

Q. Yes. And do you know other people who knew the defendant? A. Oh, yes.

1283

Q. By the way, did you do an extensive business with Kay? A. Our business ran to several hundreds of dollars.

Q. Several hundreds? A. Several thousands, I dare say, at that time.

Q. And do you know other people who know him? A. Yes.

Q. And have you talked with these other people about Kay from time to time? A. Oh, yes, sir.

Q. Do you know his reputation for truthfulness, honesty and veracity? A. Well, if I didn't think well of him we would never have extended credit to him.

The Court: That may be stricken out.

1284

Mr. Todarelli: Very well.

Q. Is it good or bad? A. Good, I should say.

Mr. Todarelli: All right. That is all.

CROSS EXAMINATION by Mr. Hilly:

Q. Were you ever a creditor of Kay's?

Mr. Todarelli: What was that?

Q. Were you ever a creditor of Kay's?

Mr. Todarelli: Oh, I am sorry.

A. No, sir. In other words, did I—did he owe us money?

*D. I. Godley, for Deft. Cross.*

Q. Yes. A. Oh, yes.

1285

Q. Do you know that he filed a petition in bankruptcy in February of 1942?

Mr. Todarelli: I object to that, your Honor.

The Court: I will permit it. It is cross examination.

A. At that time we were not doing any business with him.

Q. Oh, you were not doing business with him at that time, so you did not know about that? A. I know he filed a petition, but we were not doing any business together at that time.

1286

Q. I see. A. It was prior to that.

Q. You would not extend any credit to him then? A. The occasion did not come up to extend him credit.

Q. When was the last time that you did business with him, Mr. Godley? A. We started doing business about ten years ago. I should imagine up to about 1940 or 1941, something like that. I couldn't recall exactly.

Q. But you haven't done any business with him since, is that right? A. Not in recent years.

Q. In other words, you have not done any business with him since he filed the petition in bankruptcy, have you? A. No, sir.

1287

The Court: Anything further?

Mr. Hilly: Yes, sir, I have a few more questions.

Q. Did you know in what capacity he was connected with the Kay Advertising firm? A. He was a member of the firm.

Q. Was he a member of the firm, or was he a commission salesman on advertising? A. That I wouldn't know, sir. I always assumed he was one of the firm.

*D. Goldstein, for Deft., Direct.*

1288 Q. He was actually one of the firm, was he? A. Well, there were several members of the family there at that time.

Q. You don't know his exact participation in the firm, do you? A. No, that I could not ascertain.

Q. He could have been a salesman? A. I—

Mr. Todarelli: I object to that, your Honor.

The Court: He may answer.

A. (Continuing) I don't think he was, because we did business together.

1289 Q. Do you know? A. My assumption and belief was that he was always a member of the Kay Advertising Agency.

Q. In what capacity, do you know? A. I don't know.

Mr. Hilly: I have no further questions of this witness at this time.

Mr. Todarelli: Thank you, Mr. Godley.  
(Witness excused.)

Mr. Todarelli: David Goldstein, please.

1290 DAVID GOLDSTEIN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Goldstein, what is your business? A. I am a restaurant owner.

Q. And before you were a restaurant owner what was your business then? A. An employee in the court.

Q. What court? A. Court of General Sessions.

Q. Employed by whom? A. By the City of New York.



*D. Goldstein, for Deft., Cross.*

Q. And what did you do in that court? A. Secretary 1291  
for the late Judge Freschi.

Q. And how long have you been in the restaurant business? A. ~~Four~~ years.

Q. Do you know the defendant Alvin Kay? A. I do.

Q. For how many years have you known him? A. For over 25 years.

Q. Do you know other members of his family? A. I do.

Q. What were your relations with Kay? Social, or business, or both? A. Social.

Q. Do you know other people who know him? A. I 1292  
do.

Q. And have you talked with other people who knew about Kay from time to time? A. I did.

Q. And do you know or from that conversation are you able to tell us what his reputation is for honesty, veracity, and integrity? A. The best.

Mr. Todarelli: That is all.

CROSS EXAMINATION by Mr. Hilly:

Q. At the time you spoke with these people did you know that Kay had filed a petition in bankruptcy? A. I 1293  
did not.

Q. Well, would that have changed your opinion of him?

A. It would not.

Mr. Hilly: I have no further questions of this witness.

The Court: That is all, Mr. Goldstein.

(Witness excused.)

Mr. Todarelli: The Western Union, please.

*J. J. Humphreys, for Deft., Direct.*

1294

JOHN J. HUMPHREYS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. What is your business, sir? A. I am manager of the service department of the Western Union Telegraph Company.

Q. And have you pursuant to a subpoena produced certain records here? A. Yes, sir.

1295

Q. May I see them? A. Yes (handing papers to Mr. Todarelli).

Q. Are these records prepared by the Western Union Telegraph Company? A. Yes, sir, in the regular course of business.

Q. Regular course of business? A. Yes.

Q. And kept— A. Kept for a period of six years under the requirements.

Mr. Todarelli: I offer them in evidence, and at the same time, your Honor, I should like to—well, I will withdraw that for the time being.

Mr. Hilly: No objection.

1296

The Court: They may be received and marked as exhibits.

Mr. Todarelli: It is on that point, your Honor—this is off the record: The witness has told me that he would like to have the originals back and I have photostats.

Mr. Hilly: I have no objection to the substitution of the photostats for the originals.

The Court: Let the photostats be substituted and marked.

*J. J. Humphreys, for Deft., Direct.*

Mr. Todarelli: Yes, sir. There is only one difficulty there, and that is I only have three photostats.

1297

The Witness: There should be six.

Q. Will you look them over, please. A. There is the draft on the application, and there is the draft on the application, and there is the draft on the application.

Q. Oh, do I have them all? A. You have them all here, yes, sir.

Q. All right. Thank you.

(Marked Defendant's Exhibits V-1, V-2, W-1, W-2, X-1 and X-2.)

Q. Of those, those are money orders that were sent through the Western Union, are they not? A. Yes, sir.

1298

Q. By the person whose name is affixed thereto, is that right? A. Yes, sir, that is right, that is the application made out by the sender.

Q. By the sender? A. Yes, sir.

Mr. Todarelli: That is all.

The Court: Any cross-examination?

Mr. Hilly: No cross-examination, your Honor.

(Witness excused.)

Mr. Todarelli: May I read these to the jury, your Honor.

1299

The Court: Surely.

Mr. Todarelli: That is an application to the Western Union Telegraph Company dated October 28, 1944, and I am told, your Honor.—

Mr. Hilly: I object to anything that Mr. Todarelli is told, by the person who told it to him.

Mr. Todarelli: Let me tell it to you, and you will see how harmless it is.

*M. Waxler, for Deft., Direct.*

1300

Mr. Hilly: I do not care how harmless it is.

The Court: I think you had better ask the witness.

Mr. Todarelli: It is only the identification required by the company to pay the money. There is nothing mysterious about it. They go to the company and they pay—

The Court: Is the witness available?

Mr. Todarelli: I don't know.

The Court: Well, we will find out in a minute. Have you asked to have him brought back?

1301

Mr. Todarelli: Yes, your Honor. I am informed that he has gone.

(Mr. Todarelli read Exhibits V-1, V-2, W-1, W-2 and X-1 and X-2 to the jury.)

Mr. Todarelli: Mrs. Waxler.

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MILDRED WAXLER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

1302

Q. Mrs. Waxler, you are now married? A. That is right.

Q. What was your maiden name? A. Newman.

Q. And before you were married, what did you do? A. I was secretary with the Associated Advertising Company.

Q. Do you know the defendant, Alvin Kay? A. Yes, sir.

Q. Was he connected with that business? A. Yes, he was.

Q. When did you start working for that company? A. In March of 1937.

*M. W. Adler, for Deft., Direct.*

Q. And how long did you remain with them? A. Approximately four years until '41, October. 1303

Q. Where were the offices of the company? A. 1465 Broadway.

Q. And is that where you worked all the time? A. That's right.

Q. Who was in that business? A. Well, Mr. Alvin Kay, Mr. Bert Kay, and Mrs. Kay, Senior.

Q. And was Mr. Kay, the defendant's father, associated with that firm at all? A. When I started there he was here for one week and then he died.

Q. Died one week after you started? A. That is right. 1304

Q. What business is that firm in? A. Advertising. We did outdoor advertising and we sold due bills.

Q. What is a due bill? A. Well, that goes into an explanation. It is a form of credit to the hotel in payment for the advertising we do for them. In other words if we gave someone a bill to the hotel they took it from us at a discounted rate. If the hotel rate was \$60 per week, they got anywhere from per diem of from 25 to 50 per cent off. They presented the letter to the hotel and that was their payment.

Q. And what did Mr. Kay do in that business? A. Well, he was in charge of the office. 1305

Q. And how often did you see him? A. Every day.

Q. During the years 1939 and 1940 did you see him every day, too? A. Certainly.

Q. Did he travel frequently? A. Yes, when he—

Mr. Hilly: Objected to as leading, if your Honor please. It is his witness.

The Court: Well,—

Q. Did he travel then? A. Well, he had to go out of town many times to get contracts.

*M. Waxler, for Deft., Cross.*

1306 Q. And who had charge of drawing the checks there?  
A. I took care of the drawing of the checks.

Q. How many employees were there there besides yourself? A. There was three more girls when I started.

Q. And were the four of you employees there during the four years that you worked there? A. No, there wasn't enough room for four of us. We were three after that.

Q. Three? A. That is right.

Q. And how much salary did Mr. Kay draw? A. Well, about \$125.

1307 Q. A week? A. A week, that is right.

Q. And was that so in 1939 and 1940? A. Well, it was the same always.

Mr. Todarelli: That is all.

CROSS EXAMINATION by Mr. Hilly:

Q. What specifically was Mr. Kay's connection with the Associated Advertising, Mrs. Waxler? A. You mean Mr. Alvin Kay?

Q. Yes. A. Well, he was in charge of the office. In other words, he was my actual boss.

1308 Q. I see. A. I mean.

Q. Let me ask you this— A. Yes.

Q. —was it a partnership? A. Well, I am only employed there. I knew that it was Mr. Kay senior's business.

Q. Well, you say you went to work there in 1937, is that correct? A. That is right.

Q. And you worked there until when, Mrs. Waxler? A. October, 1941.

Q. What I would like to know is what specifically did Mr. Kay do? I am talking now with respect to Alvin Kay. What work did he specifically perform? A. Well, as I



*M. Warler, for Deft., Cross.*

said before, he was in charge of the office. Any time that I ran into difficulty I had to go to him.

1309

Q. All right. Now, was the business a corporation, or was it a partnership? A. No, as far as I knew it was a corporation.

Q. As far as you knew it was a corporation? A. I mean it was a company incorporated. I took it for granted.

Q. What officer was Mr. Kay? A. I am sorry; I couldn't answer that. I don't know.

Q. Well, did he occupy any office to your knowledge? A. I don't know.

Q. Do you know the names of any of the officers in it?

1310

A. As far as I can say there were no officers. It was the Kay's. They were all my bosses.

Q. I see. A. And Mrs. Kay, Senior, of course, on top of them.

Q. She was the boss? A. That is right, because Mr. Kay Senior was the one who hired me, and then when he died Mr. Alvin Kay took over for him.

Q. But then the real boss there was Mrs. Kay, is that correct? A. That's right.

Q. And you are sure it was a corporation? A. I don't know. I mean I just assume it was.

1311

Q. I see. And you don't know what office Alvin Kay occupied? A. No.

Q. Now, you say he got about \$120 a week? A. About \$120 or \$125. It was something like that. I mean I made out the checks, but I don't remember.

Q. Well, could it have been less than \$125? A. No.

Q. Could it have been more? A. I am sure it was over \$100 per week. I would not want to be tied down to any thing specific.

*M. Waxler, for Def., Cross.*

1312 Q. And did you know that in February, 1942, he filed a petition in bankruptcy? A. No. I was away from there then. I didn't know.

Q. I see. You didn't know anything about that? A. No.

Q. Do you know specifically what interest he had in the Associated Advertising Company? A. I don't understand what you mean.

Q. Well, was he an employee, or was he a partner? A. Well, as far as my knowledge I would consider him more or less a partner, because it was part of his business.

1313 Q. All right. Now, you left because you got married in October of 1941, is that correct? A. No; I was married in '39.

Q. But you were not discharged, were you? A. No, no, I left of my own accord.

Q. You just retired from business, is that correct? A. That is right.

Q. Now, with respect to the other members of his family that were associated with the business, what salaries did they draw? A. Well, Mr. Bert Kay did not draw a salary from the New York office, because we had another office in Atlantic City which he was in charge of.

Q. And he drew— A. Yes, I mean he took care of the other end and he brought in the contracts here.

Q. Well, do you know what he drew from the Atlantic City office? A. No, I don't.

Q. Who else drew money from the New York office? A. Of course, Mrs. Kay Senior.

Q. How much money did she draw? A. Well, I would say the same amount, not less.

Q. Now, were there any other members of the family connected with the New York office? A. No.

*M. Waxler, for Deft., Re-direct.*

*M. L. Rein, for Deft., Direct.*

1315

Q. So, then, it was Mr. Kay and his mother? A. That is right.

Q. And the three girl employees, is that right? A. That is right.

Mr. Hilly: I have no further questions of this witness at this time.

RE-DIRECT EXAMINATION by Mr. Todarelli:

Q. Did you know that Mr. Kay filed a petition in bankruptcy? A. No, I did not.

Mr. Todarelli: All right, that is all.

The Court: We will take our morning recess now.

1316

(Witness excused.)

(Short recess.)

MILTON L. REIN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. You pronounce your name Rane? A. Rane.

Q. R-e-i-n? A. Yes.

Q. What is your business, Mr. Rein? A. I am assistant clerk at the Women's Court, City Magistrates' Court, City of New York.

1317.

Q. And have you pursuant to a subpoena produced the certain records in the case of People v. Betty Sorrentino?

A. I have.

Q. And do you have those records with you? A. I do (handing to Mr. Todarelli).

Q. And were those records made in the course of the

*M. L. Rein, for Def., Direct.*

1318 business of the Magistrates' Court, Women's Court? A. They were.

Q. And are they part of your records at the present time? A. They are.

Q. And do I have all the papers that you have? A. You have all the papers that we have under that name and number.

Q. Is there a warrant attached to these papers? A. There is. It is the yellow paper, the warrant.

Mr. Todarelli: I offer these papers in evidence.

Mr. Hilly: I have no objection.

1319 The Court: They may be received and marked as an exhibit.

(Marked Defendant's Exhibit Y.)

Mr. Todarelli: May I read them, your Honor?

The Court: Yes, sir.

Mr. Todarelli: I will read them in the order that they appear here, although I do not know that that is chronological.

(Mr. Todarelli read Defendant's Exhibit Y to the jury.)

Q. What does that mean, Mr. Rein, classification 27?

1320 A. May I see it, please?

Q. Classification 27. A. That is the classification of the fingerprints.

Q. And 28M1? A. That is also part of that.

Mr. Todarelli: Mr. Rein says that those numbers 27, 10, 22 and 28M1 are fingerprint identification marks.

The Witness: That is right.

Q. And SS, that means suspended sentence, doesn't it?

A. Yes, that is right.

*M. L. Rein, for Deft., Direct.*

Q. And 5 D? A. Fifth division.

1321

Q. And W. S. F., is that some prison, or is that Westfield State Farms? A. Return to Westfield State Farms, probably. That I am not sure of.

Q. May I interrupt there? Do you know what that section is? A. 4D or 4C?

Q. 4D 887, or 4D? A. 887 is the section on vagrancy or prostitution. There are various subdivisions. I don't know offhand which one. D, I believe that is aiding and abetting, and so it would be an error there.

Mr. Hilly: I did not hear that.

The Witness: I believe that the D is an error. I have read through these papers. I don't recall seeing a D there. If it does say D that is probably not the proper section.

1322

Mr. Hilly: You mean the record is incorrect?

The Witness: I think it is 4C.

Mr. Hilly: What is 4C?

The Witness: 4C is loitering for the purpose of enticing another to commit an indecent or lewd or unlawful sexual intercourse.

Mr. Todarelli: And the notary is undecipherable.

Mr. Hilly: Yes, I agree.

1323

Q. You said this was a warrant, I believe A. Yes.

Q. A bench warrant? A. Yes, sir.

Q. By the way, maybe you can throw some light on this. Do you know whose signature that is? A. R. R. Murphy, Raphael R. Murphy.

Q. Magistrate Murphy? A. Yes, sir.

Q. And Arr. Off., that means arresting officer? A. Yes.

Q. And P. O., probation officer? A. That is right.

*M. L. Rein, for Deft., Cross.*

1324 Q. Will you please read that? A. (Reading) "I have made diligent effort to locate the defendant and I am unable to find her."

Q. And whose signature is that? A. Officer John Pacifico.

CROSS EXAMINATION by Mr. Hilly;

Q. Now, on this sheet of paper here, Mr. Rein,— A. Yes.

Q. —she was arrested under the name of Joyce Winters, is that correct? A. That is right.

1325 Q. What was the date of the arrest? A. 11-8-39.

Q. And what was the charge? A. 887-4C.

Q. And what specifically is that, sir? A. That is loitering for the purpose of committing a lewd and indecent act, or an act of unlawful sexual intercourse.

Q. And she received what? A. Suspended sentence from Magistrate Brill, Ninth District Court.

Q. And then she was returned to Westfield State Farms as a parole violator, is that correct? A. I don't know.

Q. Well, what does this return to W.S.F. mean? A. I am not sure what that means.

1326 Q. You are not sure of that? A. No.

Q. Well, isn't it a fair statement that it is Westfield State Farms? A. I should think that there would be a prior conviction on this sheet if that were so.

Q. You don't know what that is? A. I am not sure what that is.

Q. Is there any way you have of ascertaining what that means? A. Yes.

Q. Can you ascertain that fact for us and come back? A. I can do that in a few minutes, I believe.



*M. L. Rein, for Deft., Cross.*

Mr. Hilly: If Mr. Todarelli will concede that this WCF is Westfield State Farms— 1327

Mr. Todarelli: I think so.

Mr. Hilly: Let us not think about it. I am asking you to concede it, Mr. Todarelli.

Mr. Todarelli: I can't concede what I don't know.

Mr. Hilly: If you won't concede it the witness says he can check it.

Mr. Todarelli: I can't concede what I don't know, your Honor. I never saw one of those things before. I think it is.

Q. Would you check it, Mr. Rein? That would eliminate all doubt. Do you need that piece of paper to check it? A. It would be advisable. 1328

Q. All right. Do you want to take that with you? A. I can phone from here.

Q. All right. I appreciate if you would, sir.

(At this point the witness left the stand and after a few minutes returned to the stand.)

Q. Were you able to ascertain what that means? A. Yes, that does stand for Westfield State Farms.

Q. Now, Mr. Rein, were there any affidavits in support of that conviction in this file? A. Of which conviction? Of Joyce Winters? 1329

Q. Joyce Winters. A. Or Mrs. Sorrentino?

Q. Joyce Winters. A. No, that is a previous conviction.

Q. With respect to this conviction in 1939 there is no affidavit in support of it? A. Not in this file.

Q. I see. Well, are there any papers in the Magistrates' Court in support of this conviction? A. There should be. I have not looked for them. I assume that they are there.

Q. Well, was this record here with respect to Joyce

*M. L. Rein, for Deft., Cross.*

1330 Winters part of this file, or was it part of another file in the Magistrates' Court? A. It was part of this file.

Q. It was part of this file despite the fact that all the other papers in there refer to Betty Sorrentino, is that correct? A. Yes.

Q. And are concerned with the violation that occurred in August 1942? A. Yes.

Q. And this one here occurred in 1939? A. 1939.

Q. Would there be similar papers with respect to an affidavit by the arresting officer with respect to the arrest of Joyce Winters? A. There would be an affidavit by Officer

1331 Walsh who arrested Joyce Winters and who was convicted 11-18-39.

Q. That is where she received a suspended sentence? A. And received a suspended sentence.

Q. I wonder if you would be good enough to get those papers? A. I can.

Q. Could you bring them back after lunch? A. Yes.

Mr. Hilly: The witness does not want to leave the papers here. I assume you have no objection to that?

Mr. Todarelli: You mean he will bring them back this afternoon?

1332 The Witness: Yes.

Mr. Hilly: Well, he does not want to leave them at any time, and of course I have no objection.

Mr. Todarelli: Well, will you leave them with the clerk, Mr. Witness, until you come back at any rate?

The Witness: Why, certainly. The only thing is when the case is finished we would like to have our files complete, and if this will not get mislaid all right.

Mr. Todarelli: The clerk will be responsible for them.

*M. L. Rein, for Deft., Re-direct, Re-cross.*

The Court: All right. Leave them with the clerk temporarily, Mr. Rein, and then you may have them back. 1333

Mr. Hilly: And you will bring the files of the other papers this afternoon?

The Witness: I will make a notation.

RE-DIRECT EXAMINATION by Mr. Todarelli:

Q. Just a minute, Mr. Rein. The name Joyce Winter's appears on a sheet called the record of Conviction, doesn't it? A. The name—pardon me?

Q. The name Joyce Winters in that file appears on a sheet called Record of Convictions? A. Yes, it does. 1334

Q. Isn't that right? A. Yes, sir.

Q. So that the record of prior convictions is in every file, isn't it? A. If there have been prior convictions, yes.

Q. Naturally. And I do not know whether I asked you this on direct examination: Is the warrant of arrest still outstanding? A. It is.

Q. It has never been executed? A. That's right.

Mr. Todarelli: That is all.

RE-CROSS EXAMINATION by Mr. Hilly:

Q. You say the record of prior convictions is in your file, is that correct? A. There is a sheet which is called the Record of Prior Convictions. 1335

Q. Well, it is not in that file, is it?

Mr. Todarelli: Yes.

A. That is the sheet you showed me.

Q. Well, is it in that file? A. Yes, that is the sheet.

Mr. Todarelli: It is labeled.

Q. Well, where does it show any prior conviction in that file? A. Well, it says Joyce Winters.

*M. L. Rein, for Def., Re-cross.*

1336

Q. Joyce Winters? A. 11-8-39.

Q. Look at that file. That would lead you to believe, would it not, that that was the first conviction of that woman? A. In this court, in our Magistrates' Court.

Q. Oh, in your Magistrates' Court. Well, the reason why you know there is a prior conviction is because of this notation here. Returned to W.S.F., isn't that correct? A. No. If I might explain I think I can clear that point up.

1337

Q. Certainly. A. After a conviction the defendant is fingerprinted. A sheet then is returned called the Record of Prior Convictions, and if there is any prior record what those convictions are appear, otherwise the sheet is marked "No prior convictions."

Q. Well, did you so mark— A. This is the sheet which—

Q. Did you so mark that sheet there? A. Well, this sheet says there was one prior conviction under the name of Joyce Winters.

Q. Doesn't that sheet in effect show two prior convictions? A. There is a notice of another conviction—

Q. Yes.— A. —but not in our court, for another offense.

1338

Mr. Hilly: I see. I have no further questions.

The Court: Anything more, Mr. Todarelli?

Mr. Todarelli: No, sir.

The Court: That is all.

Mr. Todarelli: Thank you.

Mr. Hilly: Your Honor, I think your Honor understands I have not as yet finished by cross examination of this witness, is that correct.

The Court: Yes.

Mr. Todarelli: All right.

(Witness temporarily excused.)

*J. Pacifico, for Deft., Direct.*

JOHN PACIFICO, called as a witness on behalf of defendant, being first duly sworn, testified as follows: 1339

Direct Examination by Mr. Todarelli:

Q. Mr. Pacifico, will you state your business, please? A. I am a police officer.

Q. How many years have you been a police officer? A. Ten years.

Q. And to what division are you attached now? A. The Five Division.

Q. What is that commonly called? A. Commonly called the Five Division.

Q. Does it have any other name besides the Fifth Division? A. -No, it has not. 1340

Q. I show you this affidavit, part of Exhibit Y, and I ask you if that is your signature?

Mr. Hilly: Conceded.

Mr. Todarelli: All right.

Q. Did you arrest a girl by the name of Betty Sorrentino?

Mr. Hilly: Conceded.

Mr. Todarelli: Well, I would like to have this witness testify, if your Honor please. 1341

The Court: Well, go ahead.

A. I did.

Mr. Todarelli: Do you have Mrs. Sorrentino here?

Mr. Hilly: No. I have not conceded that the witness Sorrentino was the woman arrested by this officer.

Q. I show you this warrant, Mr. Pacifico, attached to Exhibit Y, and ask you if that is your signature?

Mr. Hilly: Conceded.



*A. P. Carlson, for Deff., Direct.*

- 1342 A. It is.  
 Q. And did you attempt to execute that warrant? A. I did.  
 Q. And did you execute it? A. No, I did not.  
 Q. Did you look for Betty Sorrentino? A. I did.  
 Q. Did you find her? A. I did not.  
 Q. Is that warrant still outstanding? A. It is.  
 Q. And are you prepared, as an officer of the law, to execute that warrant now? A. I am.  
 Q. Did you see her this morning? A. I did not.  
 Mr. Todarelli: That is all.  
 Mr. Hilly: No questions. Thank you, Officer.  
 (Witness excused.)
- 1343

ANDREW P. CARLSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

- Q. What is your business, Mr. Carlson? A. I am building superintendent.
- 1344 Q. What address? A. 1465 Broadway.
- Q. How long have you been there? A. About 14 years it will be this fall.
- Q. Do you know the defendant Alvin Kay? A. Yes, sir.
- Q. Where did you meet him? A. I met him in the building, 1465 Broadway.
- Q. What did he do there? A. He was in the advertising business. He had an office there.
- Q. And did you see him often? A. Practically every day, yes, sir, unless he was away, or things like that.



*A. P. Carlson, for Deft., Direct.*

Q. Did you ever talk with him? A. Yes, sir, I did.

1345

Q. Do you know other people who know him? A. What?

Q. Do you know other people who know Kay? A. Well, yes, I know his family I guess, the brother and the mother.

Q. Do you know other people outside of those people? A. Outside of them, I suppose I do. I can't remember exactly who used to come up there.

Q. No, but I mean do you know other people— A. Yes.

Q. —without giving the names? A. Yes.

Q. And without giving the names do you know other people who do know this defendant? A. Yes.

1346

Q. And have you discussed Kay with them from time to time? A. No.

Q. Have you ever talked about Kay with anybody—

Mr. Hilly: Objected to as leading, if your Honor pleases.

The Court: It is leading, Mr. Todarelli.

Mr. Todarelli: I do not know whether he understood my question and so I rephrased it, that is all.

The Court: All right.

Q. Did you ever talk with these other people you knew and who knew Kay? A. Yes.

Q. Did you ever talk about Kay with them? A. No. 1347

Q. You did not? A. No.

Q. During the years 1938, '39, '40 and '41, you were still there at that building, were you not? A. Yes, sir.

Q. Did you see Kay frequently— A. Yes, sir.

Q. —during those four years? A. Yes, sir, I did.

Q. In the building? A. Yes, sir.

Q. Did you see the members of his family there?

Mr. Hilly: Your Honor,—

*A. P. Carlson, for Deft., Direct.*

1348

A. Yes.

Mr. Hilly: —I object to this as having already been answered.

Q. Did you ever hear anybody say anything bad about Kay?

Mr. Hilly: Objected to.

A. No.

The Court: That is not within the qualifications of character testimony, Mr. Todarelli, and you know that.

1349

Q. Do you know of your own knowledge how long Mr. Kay was in the building? A. Well, he was there before I came I think with Barron Collier, see? A. I came there in 1933. From then on.

Q. Did you have any business with him? A. I bought due bills from him, I think, if I can remember.

Mr. Todarelli: All right, that is all.

Mr. Hilly: I have no questions. Thank you, Mr. Carlson.

(Witness excused.)

Mr. Todarelli: The next witness will take a little while, your Honor.

1350

The Court: Very well. We will recess until 2:15.

(Recess to 2:15 p. m.)

*M. L. Rein, re-called for Deft., Cross.*

Afternoon session—2:15 P. M.

1351

Mr. Hilly: Mr. Rein.

MILTON L. REIN, re-called, further testified as follows:

Cross Examination continued by Mr. Hilly:

Q. Mr. Rein, did you produce these records that I requested you to produce this morning? A. Yes, sir, I have them here.

Q. And those are records kept by the Magistrates' Court, Women's Section, in the regular course of business?

1352

A. Yes.

Q. And it is a part of the regular course of business of the Magistrates' Court to keep such records, is it? A. It is.

Mr. Hilly: We will offer them in evidence.

Mr. Todarelli: We object to this, your Honor, and we see no useful purpose in admitting them. They are not probative of anything at all that we can see.

The Court: Your objection, Mr. Todarelli, is that they are not material?

1353

Mr. Todarelli: Yes, your Honor. You will recall that the only purpose I called—that I had the record here this morning was because of the testimony the girl gave and that I wanted to rebut.

The Court: What is your claim as to this, Mr. Hilly?

Mr. Hilly: That they are very material, if your Honor pleases. These records show her arrest in identically the same situation as it was shown as to the other arrest this morning, if your Honor pleases.

*Mr. L. Rein, re-called for Deft., Cross.*

1354

The Court: They may be received and marked as an exhibit.

(Marked Government's Exhibits 28 and 29.)

Mr. Hilly: With your Honor's permission I would like to read these to the jury.

(Mr. Hilly read Government's Exhibit 28 to the jury.)

Q. Is that Northrup? A. It looks like Northrup.

Q. Is that 887 or 881? A. It should be 887.

Q. Now, is there any disposition indicated as to what was the result of this charge? A. She was acquitted and

1355 discharged on November 8th by Magistrate Brill.

Q. Acquitted on that charge on November 8th, is that correct, sir? A. Yes.

Mr. Hilly: Now, with your Honor's permission I would like to read to the jury Government's Exhibit 29.

(Mr. Hilly read Government's Exhibit 29 to the jury.)

Q. Do these records indicate what disposition was made of that, Mr. Rein? A. Yes. She was convicted on November 8, 1939, by Magistrate Brill.

1356 Q. Before Magistrate Brill, is that correct? A. Yes.

Q. And what sentence did she receive? A. Sentence suspended.

Q. And was that the charge on which she was returned to Westfield State Farms as a parole violator? A. No, it says defendant wanted Westfield and something or other.

Q. Westfield State Farms? A. Westfield State Farms, violation of parole.

Q. And she was returned on that, is that correct? A. She was returned on that warrant.

*M. Felshin, for Deft., Direct.*

Q. That is right. She was returned to Westfield State Farms as a parole violator, is that right? A. That is right. 1357

Mr. Hilly: I have no further questions of this witness.

Mr. Todarelli: That is all.

Mr. Hilly: I think this witness wanted these records returned. Am I correct in that, Mr. Witness?

The Witness: I did, and if not I would like the name of the man in whose custody they will be.

The Court: Well, they will be in the custody of the clerk of the court. 1358

Mr. Todarelli: Your Honor, I seem to have lost my voice, and with your Honor's permission Judge Pinto will take over.

The Court: All right.

Mr. Pinto: We will call Rabbi Silverman.

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MAX FELSHIN, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Pinto:

Q. What is your business or profession, sir? A. I am a rabbi. 1359

Q. How long have you practiced? A. Since 1918.

Q. And where were you graduated from, Doctor? A. Graduated from the Jewish Theological Seminary.

Q. In New York City? A. New York City.

Q. And what synagogue or church have you been in charge of during the period that you have been practicing your religious activities? A. Well, I was a chaplain of

*M. Felshin, for Deft., Direct.*

1360 the United States Army in World War I, and since then I have had various—charge of various congregations. I was across the street here for a few years in the synagogue.

Q. Is that the one in which Judge Greenspan was head of the Men's Temple at one time? A. No; Judge Greenspan was the president of the Wall Street Synagogue, but we were across the street and we still are, but today I am in charge of the Radio City Synagogue.

Q. And how long have you been in charge of that, sir?

A. Seven years.

Q. Do you know the defendant Alvin Kay? A. Yes, I know him. I know the family.

1361 Q. Do you also know him as Alvin Krulewitch? A. Alvin Krulewitch.

Q. Has he been a member of your synagogue? A. For the past two years or so.

Q. Before that did you know him? A. Well, I knew the family since childhood. That is many years ago. When I was a little boy yet and he was a little boy, I suppose, his father and mother were particular friends. His father, may his soul rest in peace, he was a great Republican leader in politics of that day and he was a friend of my father's in those days, and we knew the boys. We grew up. In those days there was a large Jewish community in Harlem and we all lived in that section of the City in Harlem.

1362 Q. So you have known Alvin then more than two years?

A. Yes, I have known the family all through the years.

Q. Through this association with his family and as a result of his being a member of your synagogue, you have met other people that know him, have you not? A. Oh, yes, all the time.



*M. Felskin, for Deft., Cross.*

Q. And from time to time have there been some discussions in which you took part concerning his habits and reputation in the community? A. On some occasions. On some occasions. 1363

Q. And that has been with other persons, has it? A. Yes, I often meet people who discuss the good old days when we were all living in Harlem.

Q. Now, as a result of those discussions concerning the defendant, do you know his reputation in the community for honesty and veracity and truthfulness? A. I would say that it is not only him but, generally speaking, it is the family, the Krulewitch family. I have never heard anything untoward against any member of the family. 1364

Q. Specifically the defendant, have you ever heard anything bad about him? A. Well, I never heard anything bad about him from anyone, except I was called in to testify as a character witness and I am happy to do so and to say I know nothing untoward or anything of an ill reputation of him personally, or of the family.

Mr. Pinto: Thank you very much.

CROSS EXAMINATION by Mr. Hilly:

Q. You say you discussed his character with other people, Rabbi? A. Yes, people coming into the synagogue who remember my family since we were children, and we all used to go to P. S. 184 up on 116th Street, and we would speak about different things. 1365

Q. But specifically you spoke about him? A. Specifically, yes. There was some—only not so long ago, let me think, someone spoke to me about him, a certain Mr. Easin, and some other people, and I have never heard anything untoward about him.

*M. Felshtin, for Deft., Cross.*

1366 Q. And during the course of your discussions with these other people about the character of Alvin Krulewitch, was it ever brought to your attention, or was it ever discussed that he was living with a woman who was not his wife? A. I don't know anything about his personal, private life. My impression is that he is married and he has a child or two. I don't know exactly, but that is my general impression and knowledge. I have not kept in touch with him all those years, but that is what is more or less my impression.

1367 Q. A child or two? A. Something like that. I wouldn't know exactly.

Q. Have you any idea how old those children are? A. Young children.

Q. By young children, Rabbi, what would you mean, sir? A. In the neighborhood of 10 years, maybe a few years more or less than that neighborhood.

Q. And if I told you that he was married for the first time on February 2, 1944, would that change your opinion as to the age of the children or that he actually had any children? A. Well, as I said before, I don't know the details of his personal, private life.

1368 Q. I see. A. Except as I heard it here and there.

Q. And your opinion that you have expressed there, sir, has been more or less based upon the days when you and he were boys and your father and his father were friends? A. No, it is more than that. I kept apace with members of his family. There is a section of the family who changed their name from Krulewitch to Kingston, and I know Mrs. Kingston very well. In fact, I circumcised the two children, the two children of this Mrs. Kingston.

*M. Felshin, for Deft., Re-direct.*

Q. Yes, but with respect to Kay or Krulewitch, you have not kept much pace with him, is that correct, sir? A. No. 1369

Q. And you have more or less lost touch with him for the past—what would you say, the past ten years? A. Well, except as people came in and spoke to me of the family.

Q. Yes, but specifically you have not seen him within the last ten years or so, have you, sir? A. In the last ten years I may have seen him once or twice.

Mr. Hilly: I have no further questions of this witness at this time, if your Honor pleases.

RE-DIRECT EXAMINATION by Mr. Pinto:

Q. Doctor, with reference to these children, have you heard that they were step-children or his own children, if you recall? A. I am not given to asking people too much of those things, because there are so many people that come to my attention in the course of my activities, so that I have not even got the physical time to inquire into all these— 1370

Q. But they may have been step-children?

Mr. Hilly: Objected to as leading, if your Honor please.

Mr. Pinto: I am trying to refresh his recollection. 1371

The Court: Isn't that leading, Judge Pinto?

Mr. Pinto: It may have been, sir.

Mr. Hilly: Well, I suggest that the question be withdrawn, your Honor.

Mr. Pinto: I will withdraw it.

Q. Do you recall, sir? A. I would not know. As I said—let me repeat again for the Court, that the personal life and the private life is not known to me except that I know him to be a good boy, as far as I know.

*A. Kaplan, for Beft., Direct.*

1372 Q. As far as his general reputation, that is all you know? A. The general reputation and from what I heard from people; and I never heard anything untoward against him.

Mr. Pinto: Thank you.

The Witness: And I assume that he is a good boy. That is all.

The Court: That is all.

The Witness: Thank you, your Honor.

(Witness excused.)

Mr. Pinto: Mr. A. Kaplan.

1373

ABRAHAM KAPLAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Pinto:

Q. Mr. Kaplan, what business are you engaged in, if any? A. Printing.

Q. Under what name? A. Kaplan Press.

Q. How long have you been so engaged in the City of New York? A. You mean in the City of New York how long I have been in the City of New York, do I understand?

1374 Q. Engaged in the printing business? A. Oh, since 1922 for myself.

Q. And in the course of your business and through any other source, did you meet some time ago the defendant, Al Kay or Mr. Krulewitch? A. I did.

Q. When did you first meet him, if you recall? A. Oh, more than 10 years ago.

Q. Did you do business with the Kay Advertising Company at one time? A. I did.

*A. Kaplan, for Deft., Direct.*

Q. Did you do some printing for them? A. Yes, sir. 1375

Q. Did you have any other business relations with them? A. Outside of knowing the family, his father.

Q. You knew the father as well? A. Yes, sir.

Q. And as a result of those contacts and business relations and social relations, have you had occasion from time to time during the past ten years to talk with other people about Mr. Al Krulewitch? A. I did.

Q. And they have talked to you about him? A. Yes, sir.

Q. And from those statements and conversations had are you in a position to tell us today what his reputation in the community is for honesty and truthfulness? A. I have done a great business with the gentleman and it ran into a lot of money and I have not heard anything any-time. 1376

The Court: That answer is stricken out.

Mr. Hilly: I object and move that the answer be stricken out.

The Court: Motion granted.

Mr. Pinto: I consent to it.

Q. The question is do you know his reputation in the community for telling the truth and for honesty? A. Yes, sir. 1377

Q. What is that reputation? A. Very well, honest.

Q. You mean— A. Honest, reputable and everything else in this business.

Q. I have in my hand a series of books. Did you print them for him? A. Yes, sir.

Q. You did considerable printing for the Kay Advertising Company, did you not? A. Yes, sir, I did.

*A. Kaplan, for Deft., Cross.*

1378 Q. And when was that? A. This is done in '39, '40. The year of '39 and 1940.

Q. Right here in the City of New York? A. Yes, sir.

Q. Have you any records here concerning that? A. I have some records which I was able to pick up in the office. I have the ledger sheet.

Q. Can you give us without looking at those records some approximation of the extent of your business with the Kay Advertising Company around 1939, '40 and '41?

Mr. Hilly: Objected to, if your Honor please, as being irrelevant and immaterial and incompetent.

1379 The Court: No, I think that is material.

A. Oh, it ran into—these books here, show originally his business to run into about \$5,000. Part of it was paid and we done a part of the shipping and the general trucking out, and then we didn't go through with it at that time.

Q. It was an extensive order? A. It was an extensive order, ran into an estimate of three to five thousand dollars.

Q. And before that did you have other— A. Yes, sir.

Q. —substantial business with him— A. Yes, sir.

1380 Q. —in connection with the Kay Advertising Company?

A. Yes, sir.

Mr. Pinto: That is all.

CROSS EXAMINATION by Mr. Hilly:

Q. When was the last time, Mr. Kaplan, that you had business with him? A. Oh, it must have been '42, the end of '42.

Q. How much was your business with him in '42? A. Offhand I can't say, offhand.



*A. Kaplan, for Deft., Cross.*

Q. Have you got any records with you which would refresh your recollection? A. I have some records here. One sheet I was able to pick up. It runs into dollars time and time, not a great deal of it. 1381

Q. I am interested now, sir, if from your records you could tell us how much business you did with Kay, Mr. Kay, in 1942. A. 1942? I have a record here only for the years 1940, '39. And '42 I don't think I got the sheet here.

Q. Have you any idea of the amount of business that you did with him in 1942? A. I would not know offhand. Offhand I would not know. After all it is a long time and it is a matter of the bookkeeping department. 1382

Q. Let me ask you, Mr. Kaplan, did you do business with him, or someone else in the Kay advertising firm? A. I done it with him.

Q. And did you at the time you were doing business understand what position he occupied with the Kay Advertising Company? A. Oh, he was the buyer as far as that goes, and had a lot to say. Anything that went through them went through his hands.

Q. And you extended credit to him I assume in the course of your business? A. I sure did.

Q. And was the credit extended to Alvin Kay, or was it extended to the Kay Advertising Company? A. It was extended to Alvin Kay and the Kay Advertising through his reputation. 1383

Q. Through his reputation? A. Yes, sir.

Q. I assume that is true in connection with the business you did with him in 1942? A. That is right.

Q. Did you know that in February of 1942 he filed a petition in bankruptcy? A. I did learn about it, yes.

Q. When did you know that, sir? After you extended

*A. Kaplan, for Def., Cross.*

1384 credit, or before you extended the credit? A. In fact, at that time all bills were clear at that time, and I wasn't interested in that.

Q. Oh, all the bills were paid? A. All the bills were paid up.

Q. All your bills were paid up? A. All my bills were paid up.

Q. When did you know that he filed a petition in bankruptcy? A. I really don't remember that offhand.

Q. Was it before or after your bills were paid up? A. It must have been before. He must have—he paid the bills as soon as they were rendered evidently.

Q. Could you tell us when in 1942 the bills were paid up, Mr. Kaplan? A. Offhand I can't give you the dates. I have not got the sheets.

Q. I see. A. All I got is a few sheets here.

Q. Was credit advanced to him throughout the entire year, or was it advanced to him on a month to month basis?

A. Month to month basis was the idea.

Q. All right. When is the last month that you recall advancing him credit in 1942? A. I really don't remember that.

1386 Q. Well, would you say— A. I really don't remember that.

Q. Will you say, Mr. Kaplan, that you advanced him credit for some time or some period during 1942? A. 1942.

Q. Yes. A. I don't think we done very much—very much business with the Kay Advertising, and I really don't know how much money really it was. We done not so much when the trouble started with the war and when things were different.

Q. With respect to these books that Judge Pinto showed

*A. Kaplan, for Deft., Cross.*

you before, that was a \$5,000 contract? A. That was a \$5,000 contract. 1387

Q. You did part of the work for them on that contract, is that correct? A. That is right.

Q. And the war terminated the balance, is that right? A. That is right.

Q. But the contract, that contract, did it terminate as of the date of the war, that is December 7, or did it terminate some months thereafter? A. No, it must have been—it must have been somewheres around that time offhand. I have not got the records of it and I don't remember.

Q. Have you got the records in your office, Mr. Kaplan? 1388  
A. I probably would find them. If I can find them.

Q. Had you looked for them today and you could not find them? A. I could not find them. These two sheets I was able to pick up. I kept them on file. The others are destroyed after five years, four years' time.

Q. You are not in any position to tell us when was the last time that you extended credit to him? A. I can't offhand, no.

Q. Let me ask you one question more, Mr. Kaplan. Since 1942 did you advance any credit to the Kay Advertising Company? A. No, sir. 1389

Q. And is that due to the fact that you heard Alvin Kay filed a petition in bankruptcy?

Mr. Pinto: Your Honor, I object at this time—

A. Yes.

Mr. Pinto: I think we are going far afield now, and this is long after this advertising business. There is no proof that this defendant carried on that business after that, as I understand it.

*A. Kaplan, for Deft., Re-direct.*  
*T. A. Dowd, Jr., for Deft., Direct.*

1390

The Court: He answered the question. Read the question and the answer, please, Mr. Reporter.

(Question and answer read.)

Mr. Hilly: I have no further questions of this witness.

RE-DIRECT EXAMINATION by Mr. Pinto:

Q. Well, Mr. Witness, on the basis of your previous satisfactory business relations with the defendant, and the fact that he paid you everything he owed you, would you extend credit to him today?

1391

Mr. Hilly: I object to the form—

A. Yes, sir.

Mr. Hilly: Just let me make the objection? If your Honor please, I object to the form of that question and to the use of the word "satisfactory".

Mr. Pinto: Well, he has said that everything was paid up and I assume it is fair to say that was satisfactory.

The Court: I will let the answer stand.

Mr. Pinto: That is all.

(Witness excused.)

1392

Mr. Pinto: Dowd.

THOMAS A. DOWD, JR., called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Pinto:

Q. Mr. Dowd, do you know the defendant? A. Yes, sir. I do.

*T. A. Dowd, Jr., for Deft., Direct.*

Q. How long have you known him? A. Ten years.

1393

Q. And how did you first meet him, if you recall? A. If I recall I was in New York and I believe his brother whom I had known previously, had introduced me to him.

Q. Now, what business are you engaged in? A. Cemetery business in New Jersey.

Q. What is that? A. Cemetery, part owner with my family of two cemeteries.

Q. And where are those cemeteries located? A. One, Roseland Memorial Park in Hanover, New Jersey, and the other is Graceland Memorial Park in Kenilworth, New Jersey.

1394

Q. Do you have any other business activities? A. No, sir.

Q. In the past ten years you have known the defendant, have you from time to time visited his home? A. I have.

Q. Have you visited the home of his parents? A. His mother. I did not know his father.

Q. Have you visited his brother? A. Yes.

Q. And more recently have you visited the defendant and his wife in New York City? A. Yes, I have.

Q. Whereabouts is that, do you recall? A. 91st Street and Madison Avenue.

1395

Q. And did you there meet his wife and his stepchildren?

Mr. Hilly: Objected to.

A. Yes, sir.

Mr. Hilly: I object to this line of questioning, if your Honor pleases.

The Court: I assume it is preliminary to something else, Mr. Hilly.

Mr. Pinto: Yes. I am just trying to show how he knows the defendant and what he knows of him.



*T. A. Dowd, Jr., for Deft., Direct.*

1396

Q. Did you answer that? A. Yes, I did.

The Court: He said Yes.

Q. Do you remember how many children there are? A. Two.

Q. And during the past ten years have you from time to time had occasion to meet other people and friends of the defendant? A. Yes, I have met people that knew him.

Q. And in the course of those meetings have you discussed Alvin Kay? A. Yes.

Q. And have other people discussed Mr. Kay with you? A. The name has been mentioned, yes, sir.

1397

Q. And as a result of those conversations and discussions are you prepared today, sir, to tell us what the defendant's reputation in the community is for honesty and veracity and truthfulness? A. I should say good. I never heard anything bad about him.

Mr. Pinto: Thank you.

Mr. Hilly: I have no questions. Thank you, Mr. Dowd.

The Court: That is all.

(Witness excused.)

Mr. Pinto: Miss Woods of the Westfield State Farms.

1398

Mr. Hilly: That is Miss Watson, Judge.

Mr. Pinto: Is it?

Mr. Hilly: Yes.

Mr. Pinto: I stand corrected.



*J. Watson, for Deft., Direct.*

JOAN WATSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows: 1399

Direct Examination by Mr. Pinto:

Q. Miss Watson, where are you employed? A. Westfield State Farms.

Q. And that is a State institution, is it? A. It is.

Q. Located up at Bedford, Westchester County? A. Bedford Hills, New York.

Q. And what position do you hold there? A. Transfer agent.

Q. You came here today in response to a subpoena left at the institution to bring here certain records and papers, did you not? A. I did. 1400

Q. Will you kindly glance at them, please? A. Yes.

Q. Now, do those papers that you have there refer to the case of a female that was confined in Bedford, or Westfield State Farms, sometime in 1939 and '40 under the name of Johnston and Joyce Winters? A. Yes, it does.

Q. Are there any other names that she was known as? A. I would not know without going through the whole thing.

Mr. Hilly: Objected to as reading from a file that is not in evidence. I have no objection if you want to offer the whole thing in evidence. 1401

The Court: The witness has been asked to read from the file.

Mr. Pinto: I have not asked her—

Mr. Hilly: But the witness, if your Honor pleases, said she could not give any other names unless she went through the files.

The Court: All right. There has been no harm done.

*J. Watson, for Deft., Direct.*

1402 Q. These papers that you brought here are kept at the institution in question in the regular course of business, are they not? A. Yes, sir, they are.

Q. In other words, there is a file there pertaining to every inmate of that institution, isn't there? A. Yes, there is.

Q. And you brought that file referring to a female by the name of Joyce Winters, Johnston and some other names? A. Yes, I did.

Q. Now, I ask you to please look through that file and see if you find there a letter under date of November 20, 1939, written by Al Kay requesting permission to visit that particular inmate in that institution that you represent?

1403 A. Do you want me to look through the file now?

Mr. Hilly: I object to that question, if your Honor pleases.

The Court: What is the objection?

Mr. Hilly: I think that, if your Honor pleases, the file itself would be the best evidence. He can offer the entire file in evidence.

1404 Mr. Pinto: Why, it is a great mass of papers, the most of which would be highly incompetent and irrelevant on the issues before this jury. I simply want a few letters that we think will show light on the issue being tried before this Court and jury. There is no need of a great mass of papers that have no materiality.

The Court: Well, there has already been testimony in the case that the defendant I think went there and tried to see her, or made application, or something to that effect.

Mr. Pinto: That is right, and I just wanted a verification of those items, and that is all.

*J. Watson, for Deft., Direct.*

The Court: All right. Go ahead.

1405

Mr. Hilly: If that is all that the Judge wants I will concede that he visited her at the institution.

Mr. Pinto: No. I want to have the letters. I want to have them marked, and I want this jury to have permission to see them.

Mr. Hilly: That is precisely it, if your Honor pleases. Now, what they are trying to do here, or what they are going to try to do here, is to take that file apart piece by piece and use only such portions of it as they think they can, but I submit to your Honor that in a question such as this the entire file should go in. That file can't be read, one letter taken out here and an isolated page here. Either the entire file should be read, or no portion of the file should be read, your Honor, and consequently I object to it, sir.

1406

The Court: You may make an offer later on.

Mr. Hilly: Thank you. I will, sir.

Q: Will you look through there, Miss Watson, please, and see if you find a letter under date of November 20,

1939 A. From Alvin Kay?

Q: Written by Alvin Kay requesting permission to visit the institution. A. Here is one requesting a visit. Is that the one you are talking about?

1407

Q. Is that dated November 20, 1939? A. It is.

Mr. Pinto: I offer this in evidence, Mr. Hilly.

Mr. Hilly: I object to it, if your Honor pleases, as being irrelevant, incompetent and immaterial.

The Court: I will have to see the letter.

(Mr. Pinto hands letter to Court.)

The Court: It may be received.

(Marked Defendant's Exhibit Z.)

*J. Watson, for Deft., Direct.*

1408

Q. Miss Watson, will you now see if you can find a reply by the superintendent or other head of that institution under date of November 24th to the letter just marked in evidence? I am told it is on the back of the very same letter, Miss Watson. Does that help you? A. Here is the reply from them.

Q. It is on the back of the very same letter? A. Yes.

Mr. Pinto: I offer that reply in evidence.

The Court: Let me see the letter.

Mr. Hilly: I object to it, if your Honor pleases.

The Court: I want to read it.

1409

(Mr. Pinto hands paper to Court.)

Mr. Hilly: Might I ask the witness one question on that letter, if your Honor pleases?

The Court: Yes.

By Mr. Hilly:

Q. Is that the reply, or is that a copy of the reply? A. Well, it is right on the back of the letter. I have no idea.

Q. You have no idea whether it is the reply? A. No.

Q. Well, is it a fact, Miss Watson, it would be a copy of the reply or a copy of the original reply that was sent? A. I couldn't say.

1410

Q. Well, if the letter was sent, it would not be in the file, isn't that correct?

The Court: Well, it is quite apparent, Mr. Hilly, that it is a copy. No question about that. It may be received in evidence.

(Marked Defendant's Exhibit AA.)

By Mr. Pinto:

Q. Will you now look for a letter written by the Department granting permission to the defendant to visit the institution under date of December 12th. A. Do you have any idea where this thing is?

*J. Watson, for Deft., Direct.*

Q. Well— A. Well, if you know it, or where it is— 1411

Q. I know it is there, but ask me not just where it is, but if I may be permitted to assist you will find a copy of the letter there written by the Commissioner of Correction in Albany to Alvin Kay, advising him that permission is being—

Mr. Hilly: If your Honor please, that is reading in the letter, and we have not even passed on it yet.

Mr. Pinto: I do not intend to—

The Court: He is trying to help her find the letter.

Mr. Pinto: That is all.

The Court: Do you think these documents are of sufficient value to take all this time, Judge Pinto? 1412

Mr. Pinto: They are, and I have no hesitation in stating to the Court what their purpose is, to show the good faith of this defendant in making an application to see her in this institution, requesting permission on his own letterhead and going up there and disclosing his full identity and attempting to do something for her.

Mr. Hilly: If your Honor please, I concede that he went up there, but I certainly object very much to saying that there was any good faith. 1413

Mr. Pinto: Well, that is the very issue that I am attempting to satisfy.

The Court: Now, the two letters are in evidence. In one he simply asked for permission to see her, and the answer is that he could see her. Now, of what value is that?

Mr. Pinto: But the next, you see, he was finally granted permission—

The Court: If you can find it in a hurry all right. This case has dragged much too long already.

*J. Watson, for Deft., Direct.*

1414 Q. You have found the letter?

The Court: Maybe you can help the witness find it. What I am complaining about is the length of time it is taking.

Mr. Pinto: I have no control over this file.

Q. May we help you? A. I don't know where it is.

Mr. Pinto: Mr. Rubin found it, and I imagine he can do so very speedily again.

Defendant offers in evidence copy of a letter taken from this file, attached thereto, as a matter of fact, addressed to Mr. Alvin Kay, 1465 Broadway, under date of December 12th, signed by the administrative assistant of the institution.

1415

Mr. Hilly: Objected to on the ground that it is irrelevant, incompetent and immaterial, if your Honor pleases.

The Court: Let me see it.

(Mr. Pinto hands letter to Court.)

The Court: That is excluded.

Mr. Pinto: While your Honor has the file right there may I indulge and ask you to look at a letter under date of December 14th. It is the very next letter. It is written on the letterhead of the defendant.

1416

The Court: December 14th?

Mr. Pinto: Yes.

The Court: No, I do not find any letter of December 14th.

Mr. Pinto: I just had it in my hand.

The Court: Is it from the defendant himself?

Mr. Pinto: That is right.

The Court: Oh, yes, I find it. That is excluded.



*J. Watson, for Def., Direct.*

Mr. Pinto: Exception.

1417

And the record will indicate that on December 17th, your Honor, that a pass was issued to the defendant to visit this girl in this institution, and I would like that offered in evidence.

The Court: December 17th.

Mr. Pinto: Yes, sir, under date of December 17th.

The Court: No, that can't be admitted without something else. Well, it shows that he was given permission to visit her once, all right.

Mr. Pinto: I do not want to ask your Honor to look for another letter. I will try to do it myself.

1418

Under date of December 29th.

The Court: I have it right here.

Mr. Pinto: From the defendant to a member of the board of the institution. I offer that in evidence.

The Court: That is excluded.

Mr. Pinto: Exception.

I ask your Honor to permit us to mark for identification the several letters which your Honor has excluded.

The Court: Yes, they may be marked.

Mr. Pinto: Namely, the ones of December 12th, December 14th, December 17th and December 29th.

1419

I would like to offer in evidence a letter written by the superintendent of the institution to the defendant under date of January 20, 1940.

The Court: That is excluded.

Mr. Pinto: Exception.

I ask that that be marked for identification.

(The above letters referred to were marked Defendant's Exhibits BB to FF for identification inclusive.)

*J. Watson, for Deft., Direct.*

1420

Mr. Pinto: I would like to offer a letter dated January 16, 1940, written by the defendant to the institution requesting another permission to visit the inmate again.

The Court: That is excluded. How many letters have I received now out of this file?

Mr. Pinto: I think two, your Honor.

The Court: I will reverse my ruling. I will also exclude them.

(Defendant's Exhibits Z and AA in evidence now marked for identification.)

1421

Mr. Pinto: Well, I ask that the one dated January 16, 1940, be marked for identification.

The Court: It may.

(Marked Defendant's Exhibit GG for identification.)

Mr. Pinto: I will offer letter written by the defendant to the institution under date of March 14, 1940, requesting another permission to visit the inmate.

The Court: Excluded.

1422

Mr. Hilly: If your Honor please, might I suggest that Judge Pinto when he makes an offer that he just give the date of the letter, to whom it is addressed, and who signed it, which facts may be mentioned, but not the contents of the letter.

The Court: All right.

Mr. Pinto: I ask that it be marked for identification.

(Marked Defendant's Exhibit HH for identification.)

Mr. Pinto: That is all.

*J. Watson, for Deft. Cross.*

CROSS EXAMINATION by Mr. Hilly:

1423

Q. Miss Watson, does the file from the institution show that a writ of habeas corpus was served on the institution?

A. Yes, it does.

Q. And are there copies of that writ in the pertinent papers? A. Yes, sir.

Q. And does the file show the date of that writ of habeas corpus? A. Yes, sir.

The Court: I am not going to admit any of the contents of this file, Mr. Hilly. You need not bother about it.

Mr. Hilly: All right, your Honor, then I won't pursue it, sir.

1424

The Court: All right.

Mr. Hilly: I have no further questions.

Mr. Pinto: We expect, if the Court pleases, to connect up these letters that have been excluded through other testimony, through other witnesses, and, therefore, we ask that this file be impounded and held here until the end of the case.

The Court: Is it possible for you to leave the file?

The Witness: Yes, I can leave it here if I can have a receipt.

1425

The Court: The witness says that if she can have a receipt from the clerk she has the permission to leave the file here, and the documents are ordered left in the custody of the clerk. Either side may examine them.

Anything further of this witness?

Mr. Hilly: No further questions. Thank you, Miss Watson.

Mr. Pinto: That is all.

*J. Watson, for Deft., Cross.*

1426

The Court: That is all, Miss Watson.  
(Witness excused.)

Mr. Pinto: Mr. Murray Auster.

It seems that several character witnesses were in the room but they had to go to meet some other engagements they had, and we have exhausted our witnesses for the afternoon.

He will be back tomorrow morning.

The Court: Can you use the witness who is out in the witness room there, Judge?

1427

Mr. Pinto: I am afraid it is going to be rather prolonged.

The Court: The whole trial has been.

Mr. Pinto: After conferring with counsel, we ask your Honor if we could not have an adjournment now? We have tried and we have done everything we could to keep these other witnesses here, but it seems they were business men and just had to keep some engagements.

The Court: Were they under subpoena?

Mr. Pinto: Yes—well, one was and the other I think was voluntary.

1428

The Court: How long will it take in the morning, Judge Pinto?

Mr. Pinto: With those witnesses?

The Court: Yes.

Mr. Pinto: They won't be very long. And then we have another witness that I do not want to start in with this afternoon, because I am not prepared to.

The Court: I realize you had to take over at the time due to Mr. Todarelli's voice.

Mr. Pinto: Yes.

*M. Auter, for Deft., Direct.*

The Court: All right, we will recess until tomorrow morning. 1429

(Adjourned to April 22, 1947, at 10:30 a. m.)

New York, April 22, 1947,  
10:30 o'clock a. m.

Trial resumed.

MURRAY AUTER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli: . 1430

Q. Mr. Auster, what is your business, please? A. I am a musician. I am an arranger, a musical arranger.

Q. And do you have an office? A. Yes, sir, I do.

Q. Where is that office, please? A. 1545 Broadway.

Q. How long have you been in that business? A. Oh, about 20 years.

Q. Do you know Alvin Kay? A. I do.

Q. For how many years have you known him? A. Oh, 15 or 16 years.

Q. And how did you come into contact with him? A. 1431  
Why, I met him originally on a business arrangement. I went up to his office to buy duet bills.

Q. And thereafter did you have any further business dealings with him? A. Oh, over a period of about four or five years I should say.

Q. Have you had any social relations with him? A.  
Why, yes, we developed a friendship, a social friendship, during that time.

Q. Did you ever visit his family? A. I did.

*M. Auster, for Deft., Cross.*

1432 Q. Do you know other people who know him? A. Quite a number, yes.

Q. And from time to time have you talked with these people where the name Kay came up? A. That is right, I have.

Q. And from that talk are you able to give us his reputation for truth, honesty and veracity? A. Well, it is very good, as far as I know.

CROSS EXAMINATION by Mr. Hilly:

Q. Under what name did you know him, Mr. Auster?

A. Alvin Kay.

1433 Q. Did you also know him by the name of Alvin Krulwich? A. Yes, sir.

Q. Did you know him by the name of Ben Gordon? A. No, sir.

Q. Did you know him by the name of Lewis? A. I did not.

Q. Did you know that at times he used those names? A. No, sir.

Q. Did you know that he lived with a woman who was not his wife? A. I did not.

1434 Q. Did those facts ever come to your attention when you were discussing him with others? A. At no time.

Q. And if I told you that, as a matter of fact, he did use the names of Gordon and Lewis, and he did live with a woman who is not his wife, would that change your opinion of him? A. Not necessarily.

Q. It would not change your opinion of him? A. Not at the moment, no.

Q. But if I told you that that was an actual fact, that



*M. Auter, for Deft., Cross.*

A, he lived with a woman, and B, used the names of Gordon, and Lewis, would that change your opinion of him? 1435  
A. No, sir.

Mr. Hilly: I have no further questions of this witness.

Mr. Todarelli: That is all.

(Witness excused.)

Mr. Todarelli: I offer in evidence, your Honor, the Official Guide of the Railways for October, 1941.

Mr. Hilly: I object to it, your Honor. I do not think it is necessary to offer the entire Official Guide.

The Court: What is the purpose of it, to show 1436  
the departure of some particular train?

Mr. Todarelli: Yes, your Honor.

The Court: Why don't you offer just that part of it then, Mr. Todarelli?

Mr. Todarelli: Well, I should like to offer then the timetables for October, 1931, as contained in this volume—

Mr. Hilly: 1941.

Mr. Todarelli: 1941, pardon me, as contained in this volume, reflecting the departure of the trains 1437  
from New York to Miami, via the Atlantic Coast Line, the Florida East Coast Railway and the Seaboard.

Mr. Hilly: I have no objection to that offer, your Honor.

The Court: It may be received and marked as an exhibit.

(Marked Defendant's Exhibit II.)

Mr. Todarelli: Mrs. Nichols, please.

*D. A. Nichols, for Deft., Direct.*

1438

DELLA A. NICHOLS, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mrs. Nichols, what is your business, please? A. I am a probation officer in the Buffalo City Court.

Q. How long have you been a probation officer? A. 25 years the 18th of last November.

Q. And, therefore, you were probation officer in 1937 in that Court, is that right? A. I was.

1439

Q. During the years what has been precisely your work? A. Supervising girls, investigating their troubles, previous to the judgment of the court, and reporting to the judges on such.

Q. And your work has been confined to the girls mostly? A. Yes.

Q. And during those years about how many cases would you say have come under your supervision, or have you worked upon roughly? A. Probably well over 2500.

Q. Have you pursuant to a subpoena issued by the defendant produced certain records? A. I have.

1440

Q. And are they the records of one Elizabeth Johnston? A. Yes.

Q. Do you have those with you? A. I do.

Mr. Todarelli: Mr. Hilly, do you have the photograph of Mrs. Sorrentino which went into evidence?

Mr. Hilly: It did not go into evidence, Mr. Todarelli.

Mr. Todarelli: Oh, yes, I am sorry. That was Exhibit 1 or 2, wasn't it?

Mr. Hilly: No, sir. Now, that is not a fair statement, if your Honor pleases.

*D. A. Nichols, for Deft., Direct.*

The Court: I do not recall that the photograph of Mrs. Sorrentino went into evidence. 1441

Mr. Todarelli: Maybe I am wrong.

Mr. Hilly: You are wrong. I will make that concession.

Mr. Todarelli: Which were the ones that I looked at, 1 and 2?

Mr. Hilly: That is right. You looked at 1 and 2 (handing to Mr. Todarelli).

Mr. Todarelli: Oh, I am sorry.

Mr. Hilly: For the purposes of the record I will concede, however, and if Mr. Todarelli had so asked me before he made that statement, I would have conceded that when this witness here, Mrs. Nichols, refers to Elizabeth Sorrentino— 1442

Mr. Todarelli: Johnston.

Mr. Hilly: Elizabeth Johnston, she is referring to the witness Sorrentino. I will make that concession.

Q. Now, did you ever meet her? A. I did.

Q. When did you first meet her? A. On January 29, 1937.

Q. Where? A. In the Buffalo City Court in my office. 1443

Q. Did you have a talk with her? A. I did.

Q. What did you say to her and what did she say to you?

Mr. Hilly: Objected to, if your Honor please, on the ground it is irrelevant and immaterial.

The Court: What is the purpose of it, Mr. Todarelli?

Mr. Todarelli: The purpose is twofold, your Honor. In the first place, and if your Honor wishes I can point out to your Honor the testimony of Mrs.

*D. A. Nichols, for Deft., Direct.*

1444

Sorrentino that I think will be disproven by this witness, number 1. Number 2, I think that I have a right to show the background of the main Government witness and to show the kind of a girl she was before she met Kay, and it is for that purpose that I am calling this witness.

Mr. Hilly: If your Honor pleases, I say to the Court that that background of the girl has been proven through the girl herself.

The Court: There does not seem to be much question about that.

1445

Mr. Hilly: The Government does not argue that.

The Court: I will permit the witness to testify.

Q. Will you answer the question, please? What did you say to her and what did she say to you? A. Well, I said many things, because in conducting an investigation there are many questions that the girl has to answer, beginning with her name and so forth, her age, her marital status, parents,

Q. Tell me what you said and what she said, the questions you asked and what answers she gave? A. I asked her name and she gave me the name of Elizabeth Wilson

1446

and her address as the Corona Hotel.

I asked her her age and she told me that she was 21 years of age, born September 27, 1916, in Canandaigua.

I asked her how long she had been in Buffalo, and she said one month.

She stated her father was born in Penn Yan.

She stated that she was married on December 12th—on December 2, 1936, in Rochester, New York, by a justice of the peace, to Ralph Wilson, who was employed as a chef.

*D. A. Nichols, for Deft., Direct.*

at the Eagle Cafeteria, also known as the Cohen Tavern 1447  
in South Park Avenue.

I asked her her father's name and she said it was Jesse Alexander Johnston, and he died 11 years ago in Canandaigua. I asked her mother's name and she said it was Dolores Leonore, who died 20 years ago.

She said she had no children, no brothers or sisters; she had no money, and her husband was earning \$15 per week.

She stated this was a brick building in which they lived and they had two rooms for which they paid \$5 per week. She gave me the previous addresses. She said 219 Lake Street, Rochester, for a year and a half, and 17 Barnum Street, Fairport, New York, for five years, 240 Pleasant Street, Canandaigua, for 16 years. 1448

I asked her about her employment and she said she was not then employed. I asked her where she had worked and she said the Coney Island Restaurant at 209 William Street for two days as a waitress where she was to have received \$5 per week, also at Seneca Point.

I asked her education, and she said she was educated in Fairport High School to the first year. I asked her her faith and she said she was a Protestant, Baptist, that the Reverend Austin was her pastor in Fairport. She went 1449  
to the Baptist Church and the Reverend Colgroff was her pastor.

I asked her in regard to her physical condition and she stated she was then pregnant. I asked her if she had had a mental test made and there was no reply to that.

I asked her if she had a previous court record and she stated no. I asked her as to her institutional record and she said no. I noted that the detective who made the arrest



*D. A. Nichols, for Deft., Direct.*

1450 was Detective William Burns of No. 2 station. This information was taken on January 27th.

Q. And after January 27th did you talk with her again?

A. Yes, and she had given me on January 27th the fact that Mr. and Mrs. Martin of Canandaigua were friends of hers and she had been with them. Henceforth I wrote to Sherman Lehman, the probation officer at Canandaigua, for information, and on that day, on February 1, 1937 I had not received an answer to that letter, so I went before the judge who was presiding, Judge Woltz, and asked for an adjournment to February 4th.

1451 Then I took the girl to my office and questioned her again and learned that most of the information I had now read was untrue and took further information.

She then gave me the name of Elizabeth Mary Johnston, with the alias of Wilson and Comings; said that she resided at 240 Pleasant Street in Canandaigua; that she was born September 27, 1919, and was about 17 years of age, and was born in Canandaigua, and she had been in Buffalo three or four weeks.

Her father was born in Penn Yan and her mother somewhere in New York State. She was a citizen. She claimed no probation but was at that time on parole from Hudson Training School, Miss Diestra of Rochester being her parole agent.

1452 She was single and she had lived with Ralph Wilson at the Corona Hotel in Buffalo; that her father, Irving Johnston, lived in Chesire and was divorced from her mother; that her mother, Lenore Gladys Comings, resided at 240 Pleasant Street in Canandaigua; that her stepmother was Jessie A. Comings.

She had said that she had had no children; that she had a brother Eugene, 22 years of age, who was residing with



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her father in Chesire; also a brother Lester, 20, who resided with the father at that same address, and also a half-brother, Morris Comings, who resided with the mother at the Pleasant Street address.

1453

She said she had no funds, that she was staying at the Corona Hotel, which was not of the best. She had one room which was paid for by Wilson.

She resided at 219 Lake Avenue in Rochester, New York, in Canandaigua, New York, and at 17 Barnum Street, Fairport, New York.

She was not employed at that time but had been working at the Coney Island Restaurant, 209 William Street, for two days as a waitress, where she was receiving \$5 per week; that she was educated to the 7th grade at Hudson Training School; that she was a Protestant Baptist and the Reverend Austin in Canandaigua was her pastor.

1454

No physical examination was made at this time. Mentally she was extremely hysterical. She claims that she did not drink liquor, does not gamble or use drugs.

Admits a previous court record in Canandaigua, New York, from which she was sent to Hudson Training School by Judge Fitch from Canandaigua.

The charge against her in our court now becomes 913-A, subdivision A, on complaint of Detective William Burns, from which she was sent to Westfield State Farms on February 6th before Honorable Judge Woltz.

1455

Q. I think you said that the date of that conversation that you just related was February 1, 1937? A. Yes.

Q. And the court sentenced her February 6th? A. Between February 1st and February 6th.

Q. Did you talk with her again? A. I did.

*D. A. Nichols, for Deft., Direct.*

1456 Q. When did you next talk with her? A. On February 3rd—on February 4th.

Q. Will you tell us what was said then? A. Following the information that I received from her I learned that she had been—she was on parole.

The parole officer in Buffalo at that time was Miss Berge, so I called her and checked on her difficulty.

Following that, on February 3rd, Miss Berge came in accompanied by Miss Gertrude Diestra, from Rochester, who was the parole agent for the girl, and it was then that we had the conversation with the two parole agents, and 1457 the information was then laid before Judge Woltz that the girl was a wayward minor. That was following a conversation of the judge with the police officer and the two parole officers, and at that time the girl was arraigned before the judge charged with that offense.

On February 5th I received the birth certificate showing the girl to have been born on September 27, 1919, in Canandaigua.

Of course, the case was adjourned to the 6th, at which time the Wilson boys who she had been the complainant against, or who had been arrested with her, were arraigned 1458 before the Honorable Harry Zimmer.

Q. And after Miss Berge and Miss Diestra came into the picture, did you have a talk with this girl? A. Following Miss Berge and Miss Diestra coming into this matter, Miss Diestra submitted to me a report of the Hudson Training School record of the girl.

Q. And did you talk— A. And it was following that that I confronted the girl with her record and with her birth certificate.

Q. Now, what did you say and what did she say? A. I asked the girl—I read the report from Miss Diestra to

*D. A. Nichols, for Deft., Direct.*

the girl, and asked her if it was true, and she admitted that it was. 1459

I also showed her the birth certificate and asked her if that was correct and she admitted that it was.

Q. And do you have the record that you read to her?

A. Yes.

Q. And did you read it word to word to her? A. I did.

Mr. Todarelli: I offer it in evidence.

Mr. Hilly: It is purely hearsay.

The Court: Yes, that is hearsay, Mr. Todarelli. I am not going to admit that.

Mr. Todarelli: I respectfully except. 1460

May we have it marked for identification? It may be considered marked for identification, or do you object to having it marked?

The Witness: Will it have to remain here?

Mr. Todarelli: I don't think so.

The Court: Not if it is not an exhibit.

Q. We can get it if we need it again, can't we, Mrs. Nichols? A. Yes. It is part of our court records.

(Marked Defendant's Exhibit JJ for identification.)

Q. Did you and she have a talk about her life in the Hudson Training School, Mrs. Nichols? A. Well, following the reading of the report to her— 1461

Q. That is what I mean. A. —she then admitted to me that she had run away from the training school, and while she was away had been apprehended and brought back.

Q. Was anything said about any other incident that took place at the Hudson Training School? A. Well, in the report as I received it—

Q. No.

*D. A. Nichols, for Deft., Direct.*

1462

Mr. Hilly: I object to anything that is in the report, if your Honor pleases.

Q. Don't tell us what you see in the report; merely tell me if there was anything in the report that you discussed after reading the report to this girl? A. Many things.

Q. That is what I want you to tell us, if you will, please, what you discussed with her. A., So I asked her if the report as to her health examination was true in which it was stated that she had gonorrhea—

Q. What did she say? A. —when she ran away, and she admitted to me that it was.

1463 Q. Yes. A. And that she was treated for the same.

Q. You may look at that report and see if it refreshes your recollection as to anything else you discussed with her after you read the report to her. A. I discussed with her the facts about her mother and father's living with other men and women and not being married, and she admitted that she knew that.

1464 She admitted to me that two boys had been committed to Elmira Reformatory at the time that she was sent to Hudson through her having been involved with them at that time. I asked her if it was true that she had been untruthful there as they had said, and she admitted she had been.

I asked her if it was true that she had been allowed to leave the building to go to a beauty parlor and if it was true that she ran away, and she admitted that it was.

I asked her if it was true that her mother had received a telegram from the Superintendent of Bellevue Hospital that the girl was there seriously ill, and she admitted that it was. I asked her if the authorities at Bellevue had knowledge that she was a ward of Hudson School and she said she did not inform them of such.

*D. A. Nichols, for Deft., Direct.*

Q. When you say Bellevue Hospital, what city are you talking about? A. New York.

1465

I asked her if it was true that she had been obnoxious in her behavior in Bellevue, flirting with the men there and so forth, and that they had asked that she be removed from there, and she stated that she guessed perhaps it might be so.

I asked her if it was true whether after she was returned to her mother's home that she left there without informing her parole officer, and she stated that she did so on June 19, 1936.

I asked her if it was true that she was returned to the school on June 10th or 11th and she stated that it was on June 11th.

1466

On December 14th I asked her if she knew of her mother writing to the parole agent complaining about her behavior, and she said that her mother threatened to do so.

Q. Mrs. Nichols, you just said that on December 14th you asked her that. Is that quite correct? A. No, it is not December 14th, but I asked her if on December 14th.

Q. Yes. All right. Was any conversation had with her at any time at all about how she came to go to Hudson Training School? A. Yes. She told me the story of two Canandaigua boys being picked up with her and that it was through her behavior at that time and the things that had happened that she was committed to Hudson Training School.

1467

Q. Mrs. Nichols, were you present in court on February 6th when she was sent to Westfield? A. I was.

Q. And what took place then?

Mr. Hilly: I submit, if your Honor please, that what any judge said at that time is not material in this case.

Mr. Todarelli: But it was said in her presence.



*D. A. Nichols, for Deft., Direct.*

1468 Q. Was the girl there?

Mr. Hilly: I do not care if it was in the presence of the witness Sorrentino or not. I submit to your Honor that it is not material.

The Court: I think it is hearsay myself.

Mr. Todarelli: Perhaps your Honor is right on that.

1469 Q. Mrs. Nichols, I only want to know what the girl said, or did she say anything? A. She became very hysterical and very abusive and stated that she felt that if she was being sentenced at that time that something must happen to the two Wilson boys who were largely responsible for her having been picked up.

Q. And, now, you stated that the second time you talked to her, which I think was February 1st, she gave you a story differently from the one she had given you prior thereto? A. Entirely different.

Q. Did she voluntarily come to you with that changed story? A. No, she did not. She was brought into my office for me and questioned her further when I had the information from other sources that she was not being truthful.

1470 Q. Mrs. Nichols, altogether during the time that you had her case before you, before she went to Westfield, from the time she was arrested, in other words, until the time she was sent to Westfield, did you spend a great deal of time with this girl? A. She was brought back and forth to my office several times by Detective Burns.

Q. And every time she came to your office did you talk with her? A. Surely. I was trying to ascertain the facts.

Q. From your experience as a probation officer, covering 25 years, and from your observations of the girl, from



*D. A. Nichols, for Deft., Direct.*

the conversations that you had with her, and from all the talks that you had with her, would you believe her under oath? 1471

Mr. Hilly: Objected to, if your Honor please.

The Court: Oh, no, now, Mr. Todarelli. You are asking for an opinion now that is not proper. That is a question for the jury to determine and not the opinion of this witness.

Mr. Todarelli: Very well, your Honor.

Q. Did you have a talk with her, Mrs. Nichols, at any time about the arrest in Buffalo?

Mr. Hilly: Objected to, if your Honor pleases. That has been covered, and I think the question is leading. 1472

Mr. Todarelli: Well, I have to direct her attention to something.

The Court: I do not know if it has been covered.

Mr. Todarelli: I do not think we have covered that, your Honor, about the actual arrest.

The Court: All right, go ahead.

A. I had a conversation with her and the detective who made the arrest—

Q. Together? A. —in my office. 1473

Q. Together? A. Together.

Q. And what was said in the presence of the girl?

The Court: No. You will have to confine yourself to what the girl said.

Q. What did the girl say about the arrest? A. Well, she admitted that she was picked up in the car.

Q. She admitted she was picked up in the car? A. Yes.

Q. Did she say who was with her at the time? A. What?

*D. A. Nichols, for Deft., Cross.*

1474 Q. Did she say who was with her at the time? A. She claimed that the man with her was Ralph Wilson, her husband.

Mr. Todarelli: That is all, Mrs. Nichols.

CROSS EXAMINATION by Mr. Hilly:

Q. When you questioned her about that report which has been marked Defendant's Exhibit JJ, is that, Mrs. Nichols? A. Yes, it is.

Q. That has been marked Defendant's Exhibit JJ? A. Yes.

1475 Q. Did you make any memorandum of your conversations with her about that? A. The memorandum that I made following my conversation with her about that is the revised copy of the second investigation blank. The first is the one she gave me.

Q. The first or this paper here is the report she gave you at the time she was arrested in January, is that correct? A. Yes.

Q. In your office? A. Yes.

Q. Then the second report here is what she gave you when? A. I think that—

1476 Q. I think you told us that was on February 1st, Mrs. Nichols? A. It is.

Q. I think you further told us—I may be in error—that you got this report from the parole agent in Rochester, is that correct, on February 4th? A. No, no, that came to me earlier than that.

Q. Pardon me? A. That came to me earlier than that through Miss Berge.

Q. Through Miss Berge? A. That is correct.

Q. When did you get that report from Miss Berge?

*D. A. Nichols, for Deft., Cross.*

Didn't you say on direct examination that you got it around February 4th when Miss Berge and Miss Diestra—was that the woman's name? A. I said we talked with Miss Berge and Miss Diestra at that time.

1477

Q. When? A. On the 4th.

Q. And wasn't it at that time that they brought the report to you? A. No, that was not. It was mailed to me.

Q. It was mailed to you? A. Yes.

Q. Was it mailed to you subsequent to your conversation with Miss Berge? A. No, Miss Berge—I talked with her on the 3rd and following that the report came to me. I think Miss Berge phoned for the copy, and I think it came that afternoon.

1478

Q. It came that afternoon? A. I think so.

Q. From where? A. From Rochester.

Q. From Rochester? A. She had—

Q. You were in Buffalo at that time, is that correct? A. Yes.

Q. And how far is Buffalo from Rochester? A. About 60 miles.

Q. Was it delivered through the mail or was it brought by messenger? A. I think Miss Berge brought it to the office.

1479

Q. Then you not only spoke with Miss Berge on February 1st but you also saw her in person, is that correct? A. That is right.

Q. And it was thereafter that you had this conversation? A. Miss Berge came in and talked with the girl on February 1st.

Q. Well, did you talk with her before Miss Berge talked with her on February 1st? A. Oh, yes, I talked with her originally.

*D. A. Nichols, for Deft., Cross.*

- 1480 Q. In January? A. In January.  
 Q. But I am talking with respect to February 1st— A. No.  
 Q. Did you talk with her then? A. No.  
 Q. You had no conversations with her at all on February 1st? A. Yes, I talked with the girl then.  
 Q. When did you talk with her? A. On February 1st. On February—  
 Q. I am just talking about— A. On February 4th.  
 Q. I am talking with respect to February 1st. That is the day this report was prepared, is that correct? A. That is the day this report was prepared. The original one of it was wrong, and so—no, that was on February 29th that this was prepared, and the corrected report was taken from the girl on February 1st.  
 Q. You said “February 29th.” You mean January 29th? A. January 29th. I misspoke myself.  
 Q. And that was this report here, is that correct? A. Yes, that is the incorrect report.  
 Q. That is the incorrect report? A. That is the incorrect report.  
 Q. And the correct report, when was that prepared?  
 1482 A. On February 1st.  
 Q. Is there any time that appears thereon? A. That was when she admitted—  
 Q. Well, the date that appears here is 2-1-37, and then there is notation as part of an investigation conducted, is that right? A. What do you mean?  
 Q. Well, isn't that a part of an investigation that you did or had her checked?

Mr. Todarelli: If your Honor please,—

A. The original—

*D. A. Nichols, for Deft., Cross.*

1483

Mr. Todarelli: —I object to this cross examination, reading from records that are not in evidence. I am perfectly willing to offer the entire file in evidence and Mr. Hilly can cross examine about every bit of it.

The Court: I think counsel is entitled to cross examine the witness on something that the witness has used to refresh her memory.

Mr. Todarelli: Oh, yes, for that, but Mr. Hilly is pointing out certain parts and picking out dates that are in the report, and things that are in there.

The Court: I will permit the question.

1484

Q. Is that report dated, Mrs. Nichols? A. It is originally dated January 29th, and following that on February 1st the revised report is dated as having been taken.

Q. Well, the top portion of the report concerns questions or conversations you had with Johnston on January 29th, is that correct? A. That is right, up to January—up to February 1st.

Q. So that this report here is a combination, is it not, of your conversation with her on the 29th and the 1st of February, is that correct? A. It is a copy of the things in there that were true.

1485

Q. The things in there that were true? A. Surely.

Q. Well, when were they put into the report? A. They were copied onto this blank from there.

Q. When, Mrs. Nichols? A. On January—on February 1st.

Q. On February 1st, but there is nothing in the report that would indicate that, is there? A. Other than this date of February 1 here.

Q. But that date of February 1 appears in the middle of the page, is that correct? A. That is right.

*D. A. Nichols, for Deft., Cross.*

1486 Q. Now, on February 1st did she tell you the date of her birth? A. I think—I could not be sure of that, whether that—

Q. Does the date of her birth appear on that report that you prepared on February 1, 1937, Mrs. Nichols? A. It does.

Q. And what is the date that appears? A. September 27, 1919.

Q. Now then, you got a birth certificate on February 4th, is that correct? A. I think that was the time it came, yes.

1487 Q. And that showed what date? A. This report shows on February 1st took the girl before the judge who adjourned the case to 2-4-37. Miss Berge communicated with the Hudson Training School to find girl's birthday, and so forth, so that was the time that we got the birth certificate.

Q. On your direct examination you told us you received the birth certificate on February 4, 1937. A. Just a minute. I will say I think I did. On February 5 received birth certificate from Miss Diestra showing girl's birth as 9-27-19.

Q. So that is the same date that she gave you on February 1st, isn't that correct? A. That is correct.

1488 Q. So that you did not need the birth certificate actually? She told you on February 1st the correct date of her birth, is that right? A. Yes, but she had told me differently another time, and so I had to have the date for verification.

Q. In this report here, or on this record it is incorrect? A. That is right.

Q. Doesn't this report here contain entries on February 1, 1937? A. Yes.

Q. Pardon me? A. Yes.



*D. A. Nichols, for Deft., Cross.*

Q. It contains entries that were there, too, is that right? 1489

A. Yes.

Q. It also contains entries in January, is that right?

A. Surely.

Q. But you say that is an incorrect report, is it? A. It is incorrect, because these dates, the date of her marriage, the name of her father, the facts about her brothers and so forth, were not in the report and it had to be corrected.

Q. Were not in the report? In other words, the things that were incorrect in January were, A, the date of her birth, is that correct? A. The date of her birth, her marriage and her father's and mother's death. 1490

Q. And her father's and mother's death? A. And her marriage to Wilson.

Q. And her marriage to Wilson. And she told you, did she not, that her father was born in Penn Yan, New York, is that correct? A. Yes.

Q. And you later verified that, is that right, and found out that that was true? A. That verification came through the information.

Q. Well, did you verify it, or did you satisfy in your own mind that this woman's father was born in Penn Yan, New York? A. According to the statement I received from her. 1491

Q. Well, you received a statement from the Hudson Training School, is that correct? A. Yes.

Q. And when you received this statement from the Hudson Training School, were you of the opinion that they were true? A. Well, they are supposed to be true.

Q. Well, we are safe in saying then, Mrs. Nichols, that she finally verified that her father was born in Penn Yan?

*D. A. Nichols, for Deft., Cross.*

1492 A. I did not have the birth certificate proof that her father was born in Penn Yan, but from all the information I have I think that is substantially correct.

Q. In so far as the reliable information you had it was correct, is that not the fact? A. Surely.

Q. So with respect to the two reports or your two conversations with her, that fact was true, is that right? A. That is right.

Q. So that comes down to the date of her birth and her marriage to Ralph Wilson, is that correct? A. Surely.

Q. And that you found to be incorrect? A. Yes.

1493 Q. And the girl told you that, is that right? A. Yes.

Q. Now, you say she did not come into your office voluntarily, is that right? A. Yes.

Q. She was in custody at that time, was she not? A. In the custody of the police officer.

Q. And then if she wanted to come into your office she would have to come with the police officer, is that correct? A. Yes.

Q. She could not leave the cell in which she was detained, could she? A. No, sir.

1494 Q. You said the crime charged was 913-A? A. The original charge against her was 887-1, which is vagrancy.

Q. I see. And what was the final charge? A. 913-A.

Q. And what is that? A. Wayward minor.

Q. Wayward minor? A. Yes.

Q. And now, 887, subdivision 1, that is vagrancy coming out of prostitution, is that correct? A. 887-1 is without visible means of support.

Q. Without visible means of support? A. Yes.

Q. But 887 in addition to covering vagrancy, it makes a general charge of vagrancy in various subdivisions covering phases of prostitution, is that correct? A. Yes.

*D. A. Nichols, for Deft., Cross.*

Q. And prostitution is generally charged as vagrancy, 1495  
is that correct? A. It is 887-4.

Q. 887-4, but it is in the same section, is that correct?

A. It is in the same section, but there is some difference  
between the two.

Q. I concede that there is, yes, but it is in the same sec-  
tion, is that correct? A. Yes.

Q. Then the ultimate charge when you ascertained her  
correct age was 913, is that right? A. 913-A, subdivision  
5, of the Code of Criminal Procedure.

Q. And that is that she was a wayward minor, is that  
correct? A. That she was a wayward minor, likely to be- 1496  
come depraved through her association with questionable  
people.

Q. With questionable people? A. Yes.

Q. And by "questionable people" you mean Ralph  
Wilson, is that correct? A. Not entirely. There are others  
involved when the information was brought into the case,  
when it became 913-A.

Q. But at the time she was arrested she was living with  
this man Ralph Wilson, is that correct? A. Yes.

Q. In the Corona Hotel? A. Yes, sir.

Q. And in your mind Ralph Wilson is one of those 1497  
questionable people, is that right? A. He is one of the  
persons who was with her at the time.

Q. Was there anyone else with her at the time of her  
arrest, Mrs. Nichols? A. No.

Q. She was arrested in a car with Ralph Wilson, is that  
correct? A. Yes.

Q. And she was arrested in that car on a suspicion of  
prostitution, isn't that in effect what the arrest was pri-

*D. A. Nichols, for Deft., Cross.*

1498 marily based upon? A. Yes, because of the condition in which she was there.

Q. That is correct. She was arrested at that time and on a suspicion of being a prostitute, is that correct? A. Yes, sir, on the theory that the girl was likely to be placed in a house.

Q. Likely to be placed in a house, or likely to commit prostitution with Ralph Wilson at that time, isn't that correct? A. Well, I would not know what the officer felt at that time. I could not express his opinion.

1499 Q. And upon her arrest with this Ralph Wilson when she was brought in she told you she was married to him, is that correct? A. Yes.

Q. So that if she were married to the man there would not be any charge of prostitution, is that correct? A. There was no charge of prostitution.

Q. Well, there could not have been any suspicion of prostitution? A. Probably not if she had been married to him.

Q. That is correct. And that is the story she gave you at that time, is that right? A. That she was married to him, yes.

1500 Q. And on January 29th that is the story she gave you, is that correct? A. Yes.

Q. And then on February 1, 1937, that is three days later, is that correct, Mrs. Wilson— A. Nichols.

Q. I am very sorry. I was trying to think, I was trying to do the mathematics and see if I was correct. It is three days, is that right? A. Yes.

Q. And three days later you had the police officer bring her into your office, is that correct? A. He brought her in originally.

*D. A. Nichols, for Deft. Cross.*

Q. But you had him bring her back from the detention headquarters? A. It was adjourned to that time. 1501

Q. Yes. And at that time she then told you these other facts, is that correct? A. Some of them and some of them she did not tell until I questioned her at length.

Q. Until you questioned her at length? A. Yes.

Q. Now, your investigation showed, did it not, that this girl was a product of a broken home? A. Yes, sir.

Q. And I assume that at the time of her sentence the probation officer, and you in particular, made a recommendation for the guidance of the Court? A. We did not.

Q. You did not make a recommendation? A. We state the facts to the judge and the judge makes his own decision. 1502

Q. You make no recommendation as to whether or not they should be paroled? A. We make no recommendation in our court. We do in our county court, but not in our city court.

Q. Not in your city court? A. No.

Q. Were you asked as to your opinion by the Court at that time? A. I don't think so, especially because the two parole officers were also there.

Q. You mean by the two parole officers, Miss Berge—  
A. Miss Berge. 1503

Q. —and Miss Diestra? A. And Miss Diestra.

Q. Were they asked for their recommendation? A. Yes; they recommended to the judge that because of the girl's age that she be not returned to Hudson, which could have been done, and that she be returned eventually to Westfield.

Q. To Westfield State Farms? A. Yes.

Q. They made that recommendation? A. Yes, sir.

Q. And you concurred in that recommendation? A. Surely.



*D. A. Nichols, for Deft., Re-direct.*

1504

Mr. Hilly: I have no further questions of this witness.

RE-DIRECT EXAMINATION by Mr. Todarelli:

Q. Mr. Hilly asked you what the charge 913 was, was it? A. Yes.

Q. And you answered about something that I could not take down. Will you please repeat it? A. 913-A, subdivision 5 of the Code of Criminal Procedure.

1505

Q. But I mean not that, you said something about being a wayward minor in that and I did not get that. A. That she was likely to become depraved through her association with questionable people.

Q. And Mr. Hilly then asked you whether or not the depraved characters were Ralph Wilson and you said there were others. A. Yes.

Q. Now, who were the others? A. All I have is the police officer's information that he gave me.

Q. Well, it was on the basis of the police officer's investigation that the charge was laid, wasn't it? A. Surely.

Q. And who were the other depraved characters?

Mr. Hilly: Objected to, if your Honor pleases.

1506

The Court: It is something you brought out, Mr. Hilly.

Mr. Hilly: Very well. I will withdraw my objection, then, your Honor.

A. This is the paragraph I have in that matter, but it was on the 6th that Detective Burns gave that information.

The Court: Just give the names.

The Witness: I have not the name of the fellow other than the brother of Wilson, Jack Wilson.



*D. A. Nichols, for Deft., Re-direct.*

Q. Do you have a general description? I do not mean a physical description, but I mean the genus of the depraved characters? A. Detective Burns told the probation officer that the girl had picked up a colored fellow named Dixon and had relations with him, as well as having been with an Italian fellow who Mr. Burns found her with the night of her arrest and who she introduced to him as her husband.

1507

Q. And wasn't it because of that fact and other facts in the case that the wayward minor charge was laid? A. It was.

Q. Now, in answer to Mr. Hilly's questions as to the two statements, the one of January 29th and the one of February 1st, those statements were correct, weren't they? I mean, did you take them down, or were they typewritten wrongly, or were they false statements? A. They were false statements that I took down in longhand first and my longhand was afterwards copied by my secretary.

1508

Q. Well, then, they are not incorrect statements, are they? A. No.

Q. They are statements which were given to you? A. Yes.

Q. Which proved to be false later? A. Yes.

Q. Isn't it a fact, Mrs. Nichols, that another falsehood in the statement of January 29th was that she said she was pregnant? A. Yes. There was no indication that she ever consummated that full pregnancy, so I would not know. She went to Westfield Farms, you see.

1509

Mr. Todarelli: That is all.

Mr. Hilly: I have no further questions. Thank you, Mrs. Nichols.

Mr. Todarelli: Thank you, Mrs. Nichols.

(Witness excused.)

*E. J. Slattery, for Deft., Direct.*

1510

EDMUND J. SLATTERY, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Slattery, are you a detective of the City of New York? A. That is right.

Q. How many years have you been in the Department? A. 10½.

Q. And in the summer of 1942 where were you attached? A. 23rd Squad Detectives at East 104th Street, 177 East 104th Street.

1511

Q. Do you know the defendant Alvin Kay? A. I do.

Q. Did you see him there in the summer of 1942 at the station house? A. I did.

Q. Did you have a talk with him? A. Yes, I did.

Q. What was said?

Mr. Hilly: Objected to, if your Honor please.

The Court: What is the objection?

Mr. Hilly: This is purely—I would like to approach the bench on this, if your Honor pleases.

The Court: Yes, come up.

(The following discussion took place at the bench outside of the hearing of the jury):

1512

Mr. Todarelli: I attempt to prove through this witness—

The Court: Give his name.

Mr. Todarelli: Edmund Slattery, that in the summer of 1942 the defendant went to him at the station house on East 104th Street for the purpose of complaining about an attempted extortion that had taken place a day or so before, wherein the complaining witness, Mrs. Sorrentino, flanked by four men at

W. R. Hoaglund, for Deft., Direct.

tempted to extort a thousand dollars from the defendant.

1513

The purpose of this testimony is to show that when the defendant refused to give her the money her mind became inflamed and embittered, and it is on the question of her bias and prejudice and motive for testifying falsely in this case.

The Court: The Government objection is sustained. The evidence is excluded.

Mr. Todarelli: Exception.

(The proceedings were resumed within the hearing of the jury, as follows):

1514

Q. I do not know if I asked this question. Did you see the defendant Kay in the summer of 1942? A. I did.

Q. Where? A. At the police station, 23rd Squad, Detective office.

Q. All right. A. 177 East 104th.

Mr. Todarelli: That is all.

Mr. Hilly: I have no questions. Thank you Detective.

The Court: That is all.

(Witness excused.)

Mr. Todarelli: Mr. Hoaglund, please.

1515

W. R. HOAGLUND, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Hoaglund, you are special agent for the Federal Bureau of Investigation? A. I am.

Q. And you were in 1943, were you not? A. That is correct.

*W. R. Hoagland, for Deft., Direct.*

1516 Q. Did you in May, 1943, have a conversation with a person whom we know as Mrs. Sorrentino? A. I was present.

Q. You had such a conversation? A. —while she was being interviewed, yes, sir.

Q. And who else was there, please? A. Assistant United States Attorney Edward Wallace.

Q. Yes? A. And I believe Agent Lane. I am not sure.

Q. Did you take her in to Mr. Wallace, or did you and Mr. Lane I mean take her in to Mr. Wallace? A. Mrs. Sorrentino?

1517 Q. Yes. A. Yes.

Q. And had you talked with Mrs. Sorrentino before you took her to Mr. Wallace? A. Well, we might have passed time of the day, or made some such comments.

Q. Is that all? A. Yes, sir.

Q. Did you at that time have any idea of what you wanted to see Mr. Wallace about? A. No, I don't believe I did until she got down in the office.

Q. I see. Did you participate in the interview at all? A. I don't believe I did.

Q. Now, Mr. Wallace was the Assistant United States Attorney in charge of this case at that time, was he not?

1518 A. That is correct.

Q. And he has since resigned, has he not?

Mr. Hilly: Objected to, if your Honor please.

Mr. Todarelli: I want to show, your Honor, I don't know what the objection is.

Mr. Hilly: And Mr. Wallace has since resigned, if your Honor please.

Mr. Todarelli: Your Honor, I certainly do not mean that Mr. Wallace resigned because of anything in this case whatever.

*W. R. Hoaglund, for Def., Direct.*

Mr. Hilly: Or in any other case.

1519

Mr. Todarelli: Or in any other case. Mr. Wallace is a very honorable man.

Mr. Hilly: I withdraw the objection, if your Honor pleases.

Mr. Todarelli: Certainly. I do not know how Mr. Hilly may have got the impression that I intended anything like that.

The Court: Go ahead.

A. I understand he is no longer in the United States Attorney's office.

Q. He is in private practice now, is he not? A. That is my understanding.

1520

Q. Yes. Now, what was said there? A. Well, I have no independent recollection of the conversation, Mr. Todarelli.

Q. Now, isn't it the fact, Mr. Hoaglund, that on May 27, 1943, you signed an affidavit which in effect is the complaint charging the defendant with a violation of Title 18, Section 241, of the United States Code, and I show you a true copy of that affidavit and ask you if that is not the fact?

The Court: We will take our morning recess now. (Short recess.)

1521

Mr. Todarelli: Will you be good enough, Mr. Reporter, to read the last question?

(Question read.)

A. I did.

Q. Now, of course, before you signed that affidavit you read it, did you not? A. That is correct.

Mr. Todarelli: I offer it in evidence.

Mr. Hilly: No objection if your Honor pleases, but I submit that it is irrelevant, incompetent and immaterial.

*W. R. Hoaglund, for Deft., Direct.*

1522

The Court: If you have no other objection, I will admit it. Do you object on the ground of immateriality?

Mr. Hilly: I will object to it on that ground also, if your Honor pleases.

The Court: What is the materiality of it, Mr. Todarelli?

Mr. Todarelli: Well, I can't do it all at once. What I am trying to show is that Mr. Hoaglund was advised of the facts upon which he later drew this complaint; and it is difficult to do it all at once unless I have this—

1523

The Court: Advised of the facts by whom?

Mr. Todarelli: By the girl, because the paper speaks for itself.

The Court: All right. I will admit it.

(Marked Defendant's Exhibit KK.)

Mr. Todarelli: With your Honor's permission I will read it to the jury.

(Mr. Todarelli read Defendant's Exhibit KK to the jury.)

1524

Q. Incidentally, the gist of the section referred to is contained in the body of the affidavit, am I right, Mr. Hoaglund? A. The gist of what section?

Q. Title 18, Section 241 of the United States Code? A. Well, I don't know what that section is, but I presume it is pertaining to the intimidation of the witness.

Q. As set forth in your affidavit? A. I believe so.

Q. Mr. Hoaglund, I direct your attention to the paragraph:

"The source of the deponent's information and the grounds of his application are investigations made by him in the course of his official duties."



*W. R. Hoaglund, for Deft., Direct.*

Did those investigations consist of the talk that you had with Mrs. Sorrentino, or that Mr. Wallace had with Mrs. Sorrentino? A. And one other person.

1525

Q. And one other person? A. That is correct.

Q. Who was that other person? A. I knew her as Virginia Serge.

Q. Would that be the same as Virginia Cole? A. I don't know. I never heard of that name Cole that I recall.

Q. Haven't you found out sometime or other in the course of your investigations that that girl is Virginia Cole, also? A. No, I couldn't say for sure, Mr. Todarelli.

Q. At any rate you had talks with these two girls? A. That is correct.

1526

Q. What did Mrs. Sorrentino tell you? A. I don't remember the exact conversation.

Q. No. A. She generally spoke of having been bothered by the defendant at every place that she lived. He would either send some of his friends to persuade her to leave town, not to testify, and some of his friends would also tell her that if she did testify why something might happen to her, and—

Q. Excuse me for interrupting. I direct your attention to the fact that "Heretofore, to wit, on or about the 20th day of May, 1943." Would you be good enough to tell me what Mrs. Sorrentino told you happened on May 20, 1943?

1527

A. I believe the United States Attorney, Mr. Wallace, asked her on what specific occasion any of these things had happened, and she mentioned that date.

Q. What did she say happened on that date? A. That she had a conversation, I believe with the defendant somewhere here in New York City on the East Side in which the same thing occurred, that he threatened to do bodily harm to her after first trying to persuade her to leave town.

*Offers.*

1528 Q. Would it refresh your recollection for me to say that took place according to her in front of the Woolworth Store, or one of the 5 and 10-cent stores? A. I don't recall that, sir. I recall her testifying to that fact. I believe it was on Second Avenue.

Q. Second Avenue? A. On the East Side, somewhere in the eighties.

Q. And did she tell Mr. Wallace that the other girl was present at the time this happened? A. Yes, I believe she did.

1529 Q. Were they both before Mr. Wallace at that time, or were they? A. Well, I am not sure offhand if the other one was questioned immediately after or before. I don't know what the order was.

Q. And because of what you heard Mrs. Sorrentino say to Mr. Wallace you signed this affidavit? A. In addition to the information furnished by Virginia Serge, that is correct.

Mr. Todarelli: That is all.

Mr. Hilly: I have no questions, Mr. Hoaglund. Thank you very much.

(Witness excused.)

1530

(Discussion at the bench, off the record, not within the hearing of the jury.)

Mr. Todarelli: I offer in evidence a lease.

Mr. Hilly: No objection. The Government concedes it.

The Court: It may be received and marked as an exhibit.

(Marked Defendant's Exhibit LL.)

Mr. Todarelli: With your Honor's permission I will just read the salient features of the lease. I do not want to read the whole lease.

*Offers.*

1531

The Court: All right.

(Mr. Todarelli read portions of Defendant's Exhibit LL to the jury.)

Mr. Todarelli: Then Mr. Hilly is prepared to concede that the bankruptcy about which there has been some testimony in February, 1942, by the defendant, that in that proceeding the defendant was discharged as a bankrupt.

Mr. Hilly: Yes. I am prepared to concede that, if your Honor pleases, but I also would like to offer in evidence the bankruptcy petition as filed as a record of this court.

1532

Mr. Todarelli: Well, that is part of the rebuttal, your Honor.

The Court: Yes. We will take that up in its order.

Mr. Hilly: All right.

Mr. Todarelli: The defendant rests, your Honor.

The Court: The defendant rests. Any rebuttal?

Mr. Hilly: Yes, your Honor. I offer the bankruptcy file in evidence, the record of this court.

Mr. Todarelli: I object to that on the ground that it is improper rebuttal and immaterial anyway.

1533

The Court: What is the record that you are offering? Is that the schedule?

Mr. Hilly: The schedules of the bankruptcy file, if your Honor pleases.

The Court: How is that material?

Mr. Hilly: Each one of these schedules bear the defendant's signature, and in view of the state of the record—

Mr. Todarelli: Now, your Honor,—

*A. Krulewitch, for Deft., Direct.*

1534

The Court: It does not make any difference. The signatures, as far as handwriting, have been conceded here.

Mr. Hilly: I am not offering it now for the signatures, if your Honor pleases. I am offering it for the contents thereof.

The Court: Excluded.

(Further discussion at the bench, outside of the hearing of the jury.)

The Court: Is there any further rebuttal?

Mr. Hilly: No further rebuttal, your Honor.

1535

The Court: We will recess now until 2 o'clock instead of 2:15.

(Recess to 2 o'clock p. m.)

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#### Afternoon Session.

Mr. Todarelli: May it please your Honor, the defendant is desirous of telling his story to the Court and jury. For that purpose I respectfully request that you permit the defendant to reopen his case and take the witness stand.

1536

The Court: Very well. The defendant's request to reopen his case is granted. You may proceed.

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ALVIN KRULEWITCH, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Todarelli:

Q. Mr. Krulewitch, where were you born? A. The United States, City of Baltimore, Maryland.

Q. How old are you? A. 54.

*A. Krulewitch, for Detl., Direct.*

Q. Did you go to school? A. I did.

1537

Q. Where? A. Baltimore and New York.

Q. And how far did you get in school? A. I believe graduated and went to business college.

Q. What business college? A. The Woolworth.

Q. Where was that? A. New York.

Q. And how old were you when you left business college? A. Around 16 years old, around.

Q. And then what did you do? A. I went to work for a Custom House broker.

Q. Where? In New York City? A. In New York City. The name was C. E. Richards & Company.

1538

Q. Doing what? A. Clerical work.

Q. And after that what did you do? A. After that I went to work for another brokerage firm, Custom House brokerage, by the name of Martin Steiner for about three or four years.

Q. And then you were about how old when you left that? A. I must have been around 22, 23, maybe 24.

Q. And then what did you do? A. Then I went I believe into the real estate field with my father.

Q. What was your father's name? A. Samuel Krulewitch.

1539

Q. And what was the name of the business in which he was engaged? A. Samuel Krulewitch & Son.

Q. Samuel Krulewitch & Son? A. That is right.

Q. And how large a family was there? A. There were three sons, one younger brother who was probably going to school, and an older brother.

Q. Is your father living now? A. No.

Q. Is your mother living? A. Yes.

Q. After you started to work for your father in the real estate business, for how long did you work there? A.

*A. Krulewitch, for Deft., Direct.*

1540 Well, I should judge about five or six years, maybe a little longer.

Q. And then what did you do? A. We went into the advertising business.

Q. When you say "we" whom do you mean? A. My father, my brother and myself.

Q. Did you go in under any special name? A. We went in at that time under I believe it was Samuel Krulewitch & Son for a while.

Q. And what was the nature of the advertising business? A. General advertising, newspapers, magazines, outdoor boards, periodicals.

1541 Q. At that time had any duebills developed? A. Well, at that time we were practically starting the duebill business in New York.

Q. About how long did you continue under that name, Samuel Krulewitch & Son, in the advertising business? A. Oh, I couldn't remember. I know we changed it later to the Kay Advertising Company, Incorporated.

Q. In business have you been known as Alvin Kay? A. Yes, sir.

Q. And were any other members of your family known under that name? A. We were all known as Kay. A lot of people couldn't pronounce the name Krulewitch and they used to say Kay.

Q. Now, the Kay advertising business was started approximately when? A. Well, I would judge 20 years ago. No, no. 25 years ago.

Q. Who was in that business? A. My father, my brother and myself.

Q. Did there come a time when the name was changed to something else, or was there another business? A. Associated Advertising Company.



Q. Was that a successor of the Kay Advertising Company or was it? A. No, it was a family affair and we formed one company, the Associated Advertising Company. That was to handle the duebills. The Kay Advertising Company was to handle the outdoor boards. And Alvin Kay and Bert Kay were formed to give out the advertising, such as we would give to Sternfeld Godley. We would give them an order for advertising for one of our accounts that we had, pay them the cash and get the discount on the commission.

1543

Q. Were these various companies under the same roof?  
A. Oh, yes.

1514

Q. At what address? A. 1465 Broadway.

Q. How many years were these companies at that address? A. Over 20 years.

Q. Did there come a time when these companies ceased to function? A. Yes.

Q. When was that? A. Around—no, I believe the Kay Advertising Company is still in business; my brother has that. But the Associated Advertising, the duebills, went out of business.

Q. What was the reason for that? A. Because the hotels and restaurants and night clubs didn't want to issue any more; they were doing a capacity business on the cash business so they didn't want to give any exchange out.

1545

Q. The income to a hotel from duebills is much less when things are booming? A. Yes. Approximately half.

Q. Prior to 1939 how many years approximately had you been in the advertising business? A. I should judge about 18 years.

Q. And did your business take you out of town? A. Yes, sir.

*A. Krulwich, for Deft., Direct.*

1546. Q. Were you out of town a great deal? A. Yes, sir.
- Q. To what cities? Just very roughly and briefly. A. Atlantic City, Washington, Chicago, Florida, Cleveland, Buffalo, Canada, Havana, Cuba, and a lot of cities in between.
- Q. Was your particular phase of the business the due business part of it or did you have other things to do also? A. Well, I had the work of selling duebills to the people and also arranging some contracts to get this business.
- Q. Were either the Associated or the Kay Advertising incorporated? A. They were both incorporated.
1547. Q. Did you hold any office in either one of those? A. No. I may have at one time or other, for a very short period; I am not sure.
- Q. Did you have any title in those companies? A. No.
- Q. I don't mean as an officer of the company. A. No.
- Q. You had no title? A. No.
- Q. What was your salary or wage arrangement? A. Well, I worked on a commission basis. I was to get 5 per cent on all sales.
- Q. Prior to 1939 what was your average income per year? A. Well, I could say four years prior to 1939, about
1548. \$35,000.
- Q. Each year? A. No, no.
- Q. Or four years combined? A. The four years.
- Q. Was your income greater in 1935 than it was in 1939? A. No. In 1936 it was one of the largest of them all.
- Q. Did it— A. It dwindled down.
- Q. It dwindled down? A. Yes.
- Q. Then in 1939 approximately what was your income from that business? A. I don't remember. About three or four thousand dollars.

*A. Krulwitch, for Deft., Direct.*

Q. Prior to that it had been much higher? A. Yes. 1549  
12,000.

Q. Did you have any other income except from the business? A. No.

Q. Did you do any other work except in connection with that business? A. That is all.

Q. Were you married in 1939? A. No, sir.

Q. Are you married today? A. I am, sir.

Q. To whom are you married? A. She is sitting over there (indicating).

Q. What was her name? A. Pauline Baker, her maiden name. 1550

Q. Do you have any children? A. I have two children by marriage, a daughter 16 and a boy 10.

Q. They are your wife's children? A. Former children.

Q. She is a widow? A. She was a widow.

Q. Or she was a widow. Approximately, let us say for three or four years prior to 1939, did these two companies, Kay and Associated, do a large volume of business? A. I would judge about a half a million dollars a year.

Q. When did your father die? A. 1937.

Q. After he died there come about any change in those companies? A. Well, the change was that my brother—my mother, who was very sick at the time and felt lost without my father— 1551

Q. She came into the business? A. We asked her to come down and we asked her to be around in order to be there, to keep her occupied.

Q. Was she there? A. She used to come down.

Q. In 1939 did you meet the witness who appeared on the stand as Mrs. Sorrentino? A. I did.

*A. Krilowitch, for Pett., Direct*

1552

Q. Approximately when did you meet her? A. I met her about May of 1939. Well, I couldn't tell exactly, but it was around May, the early part or the middle of May.

Q. Where? A. I met her in New York, on Broadway somewhere.

Q. At that time where were you living? A. At 10 Park Avenue.

Q. How many rooms did you have there? A. I could call it three rooms. It was a living room, large living room, and a large bedroom and a kitchen.

1553

Q. Do you remember this morning we placed in evidence a lease for 10 Park Avenue? A. I do.

Q. The rent was \$225 a month? A. That is correct.

Q. Were you living with anybody there? A. I was. The early part, I will say, from 1935 to 1937, about.

Q. With whom? A. With a girl by the name of Rose Bloom.

Q. Mr. Kay, were you married to her? A. No, sir.

Q. By the way, is your marriage to Pauline Baker the first marriage? A. That is correct.

Q. When you say you lived with Rose Bloom, did she live there continuously? A. No.

1554

Q. What do you mean by that? A. She used to come up and stay over the weekend; and sometimes she would stay a few extra days.

Q. Yes. A. But sometimes she wouldn't come up for a week or two.

Q. Coming back to the meeting with—shall we call her Joyce? Is that the name— A. Yes.

Q. —that you call her by? A. Yes.

Q. Coming back to the meeting with Joyce, about what time of the day was it that you met her, roughly? A. Around noontime I guess.

*A. Krulewitch, for Deft., Direct.*

Q. Tell the Jury in your own words what happened. A.

1555

The day that I met Joyce she said she was going up—she was standing on the corner as if to hail a cab, and she said was going up to 123rd Street or 122nd Street and Broadway to see some friends, and I told her I would drive her up, and I did.

She went up to some apartment house and stayed there about five or ten minutes, and then came down, and told me that the people were not in.

Then I said to her, "Well, what else do you have to do today? And she says, "I have nothing to do."

It was on a Sunday and I said, "Well, let's take a ride down to Coney Island and look over the Island before it opens up", because we had nothing to do. I had nothing to do and she had nothing to do.

1556

When we came back from Coney Island,—no, on our way down, I remember very distinctly, she became violently ill. I didn't know what was wrong with her, but I stopped the car at the first drugstore. I took her into the drugstore and I asked them to get a doctor for her. She went in the back and was talking to the drugstore man, and he gave her some sedatives or something, and she must have been in there with him, oh, I'll say at least a half hour if my memory serves me correct, and then she said she feels much better, that she could go on to Coney Island.

1557

Then we went to Coney Island and we spent probably until around 9 or 10 o'clock at Coney Island. I then brought her back and left her at the Alamac Hotel on 71st Street and Broadway, where she said she resided.

Q. Did she give you her name? A. Yes.

Q. What name did she give you? A. She gave me the name of—she said her name was Joyce Winters. And I

*A. Krulwich, for Deft., Direct.*

1558 said to her, "Tell me what is your right name." She said, "Well, to tell you the truth my right name is Walskowski."

Well, I believed her because she said that was her name, and then she asked me my name and I told her Alvin Kay. I thought she was giving me her right name and playing fair, and I gave her my right name.

Q. Now, that night you left her at the Alamac Hotel you say? A. Yes.

Q. During the day or the evening, rather,— A. I asked her also who she was staying there with, and she said with friends.

1559 The next day I called the Alamac Hotel and I asked for her, because I thought she was a very nice little girl, and I believe I got an answer that she was not registered there.

And I had an appointment with her for a day or two later and when I did see her I mentioned about her not being registered there, and she admitted she was living there with some friends. I didn't inquire into who the friends were, but I just took it for granted she was because I was leaving her there at night right in front of the door.

Q. Now, up to that time had you made love to her? A. No, sir.

1560 Q. I don't mean had you been intimate with her; I mean had you made love to her? A. No, sir.

Q. Did there come a time when you went to Chicago with her? A. Yes.

Q. Now, how long after you met her did you go to Chicago approximately? A. I would say about four weeks.

Q. And during that four weeks did you see her? A. Oh yes.

Q. How frequently? A. Well, I would have to go into that and explain that to you.



*A. Krulwich, for Deft., Direct.*

I saw her about every second night at first and then every night. I believe I saw her for about, oh, I must have saw her to the best of my memory, and that is eight or nine years ago, and it is very hard to remember, but I would say at least eight or ten times, and during that month I must have saw her at least fifteen times.

1561

Q. And did you make love to her during that month period? A. You mean in New York?

Q. Yes. A. Yes, I became a whole lot infatuated with her because I thought she was a very nice girl.

Q. Were you in love with her then? A. I was, yes, beginning to fall in love with her.

1562

Q. And did you tell her that? A. She knew it.

Q. Did she say anything to you? A. I was showering her with gifts and different things, and I believe a girl could understand that.

Q. Well, did she say anything to you? A. Yes. She told me that she cared for me.

Q. Then you went to Chicago—withdrawn, please. During that month period where did she live? A. She was supposed to be living at the Alamac Hotel.

Q. Well, was she living there during that entire month?

A. Well, I would have to explain that to you.

1563

About a week after, or even less than a week after we met Pauline Hillson, and Pauline Hillson asked me to get an apartment for her at 156th Street. She had seen the apartment at No. 555, and she asked me to take it under the name of Gordon, which I did, and when I got there and took this apartment they asked for references, and I believe I gave myself as a reference for her, not knowing her at that time outside of—I knew her but didn't know much about her.

1564

Q. Well, did you live at that address at all? A. I lived at 10 Park Avenue.

Q. Did you take Joyce there to that address at all? A. Yes, I took Joyce there to show her the apartment that her friend was taking.

Q. Before you left for Chicago had you been intimate with Joyce? A. Before I left for Chicago?

Q. Yes. A. Yes.

Q. Where? A. That I can't remember.

1565

Q. Well, was it at 515 West 156th Street? A. No, on or about June 5 or 10—if you will give me a minute's time to think on that. I will say the early part of June I took an apartment for Joyce on 15th Street, and I gave the name of Bert Lewis.

Q. What was the number of the apartment on 156th Street that you took for Joyce? A. 515.

Q. Why did you give the name of Bert Lewis? A. Well, I didn't want to be responsible for a lease, because I didn't know how long our friendship was going to continue on account of little things that happened, on noticing little things.

1566

Q. Well, you say that was about somewhere between the 5th and 10th of June? A. That is correct.

Q. And did you live there with her? A. No, sir.

Q. Was that a furnished apartment? A. No, sir, it was an empty apartment. I promised to buy her furniture and fix up the apartment for her.

Q. And did you do that before you left for Chicago? A. No, sir.

Q. Was she there with you at the apartment? A. Where? 555? No, sir.

Q. I mean, did she see it? A. Yes, sure.

*A. Krulwich, for Def., Direct.*

Q. Before you left for Chicago? A. That is correct.

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Q. Now, is there anything that has been omitted between the time you met her and the time you went to Chicago?

Mr. Hilly: I object to that question, if your Honor pleases.

Mr. Todarelli: Well, I withdraw the question.

The Court: All right.

Q. You said, Mr. Kay, that you took the apartment at 555 West 156th Street for Pauline Hillson? A. That is correct.

Q. Under what other name do you now know her to be?

1568

A. I know her name now to be Betty and also Rose Sookerman.

Q. Now, you have heard testimony during the trial about Betty. Is that the same person? A. That is the same person.

Q. How long had you known this Betty when you took this apartment at 555 West 156th Street for her? A. I had known her for about a week or ten days through Joyce—that isn't through Joyce, but through her becoming friendly with Joyce I became friendly with her.

Q. Well, who introduced you to Betty? A. I knew her boy friend, Pauline's boy friend. His name was Frank Russo. He had an Italian restaurant and I knew her, and I knew she was his girl friend, and we met them coming out of a moving picture, and Betty or Pauline Hillson invited her down to her place. She had a restaurant on 81st Street, and these two girls became friendly.

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Q. What was the name of the restaurant that Betty had? A. The Bloom Garden Cafe.

Q. Was that a cider stove? A. No, sir.

*A. Krulwich, for Deft., Direct.*

1570

Q. What was it? A. A restaurant.

Q. Well, about how many tables did it have? A. I should judge about 20 tables.

Q. Were you there? A. Yes, sir.

Q. Was Joyce there? A. Yes, sir.

Q. Now, about when did you go to Chicago? A. I can't figure the exact date, but I know it was in June. I signed the lease in June, and that's what has got me confused on that. I signed the lease at the Park Central Hotel because I was going to move out of the 10 Park Avenue Hotel, and I signed the lease some time in June, and that has me confused on the time that I left.

1571

Q. Well, at any rate, was it some time in June? A. Yes.

Q. All right. Did you take Joyce to Chicago with you? A. I did.

Q. Where did you stay? A. At the Drake Hotel.

Q. Is that one of Chicago's larger hotels? A. One of its finest.

1572

Q. Mr. Kay, why did you go to Chicago? A. I was to go there long before I met Joyce. I was to go there to open up an office, a branch office, for our duebills, an outlet for our duebills, and also I was publishing—if you have one of those books, I don't know—the Club Members of Chicago, and also to publish a Cue magazine of Chicago to be distributed to the homes.

Q. And did you tell Joyce why you were going to Chicago? A. Oh, surely.

Q. That is the first trip you made with her? A. That is the first trip.

Q. And when you got to Chicago and registered at the Drake Hotel, how many rooms did you have? A. Three.

*A. Krylowitch, for Deft., Direct.*

Q. During the time you were in Chicago did you attend to any business? A. I did. 1573

Q. Did you attend to business in the daytime or at night, or both? A. Well, I worked very hard there, mostly in the daytime and part of the nights, a couple of nights.

Q. And when you were attending to business, was Joyce with you? A. No.

Q. How long had she remained in Chicago? A. I don't think over four or five days.

Q. And during the four or five days did you take her anywhere? A. I took her to most of the night clubs. I took her to the Silver Room I believe they had at the Drake Hotel at that time. I took her to the Silver Room. 1574

Q. And did you take her to any roadhouse in the vicinity of Chicago? A. No, sir.

Q. She testified that you contacted and wanted a madam of this roadhouse to put her to work. Did you— A. No, sir.

Q. —do that? A. No, sir.

Q. Did you ever on a trip to Chicago take her anywhere and ask anybody to put her to work as a prostitute? A. No, sir.

Q. Why did she leave you in Chicago? A. She thought that the time that I would have to give to her would be neglecting my work and she didn't want me—she said at the time that she didn't want me to neglect my work, and she was going—she had to go back to New York in order for me to continue on with my work. 1575

Q. How did she come back? A. By bus.

Q. Did you pay her fare? A. I did.

Q. Prior to the time you went to Chicago had you bought her any clothing? A. Oh, yes.



*A. Krulwich, for Deft., Direct.*

1576

Q. Had you given her any money? A. Oh, yes.

Q. You said you had showered her with gifts. What were those gifts? A. Well, I took her out and bought her an outfit for Decoration Day, I can remember that. I bought her a suit and one of those large hats, and she said coming, I don't know, about an assemblage to go with her.

Q. Do you mean an ensemble? A. An ensemble, and probably a couple of dresses or something to go with it.

Q. Did you give her any money when you put her on the Greyhound bus? A. Oh, yes.

1577

Q. Now during the time, after she left Chicago what did you do? A. I continued on with my work in Chicago, and I had two days' work to do in Cleveland, and then I went to Cleveland.

Q. Well, approximately how many days did you remain in Chicago before you left for Cleveland? A. That is very hard for me to remember.

Q. Well, was it one, two, three; approximately? A. Oh, it must have been at least from four days to another week.

Q. Did you have your car with you at the time? A. I did.

1578

Q. You drove out there in the car? A. That is right.

Q. Did you telephone Joyce while you were in Chicago? A. No, sir.

Q. Did you telephone Betty while you were in Chicago? A. No, sir.

Q. Did you ask anybody for \$25 to make repairs to your car? A. No, sir.

Q. Was there any talk with anybody about a repair to your car? A. No, sir. If you mean to New York, no, sir.



*A. Krulwich, for Deft., Direct.*

Q. Now, did you tell Joyce where to go when she returned to New York? A. She told me where she was going. She told me that she will stay—she may stay with Betty until I get back and furnish up the apartment. 1579

Q. Was Betty married at the time, that you knew? A. I couldn't say that.

Q. Well, do you know whether or not she was living alone at 555 West 156th Street? A. That I couldn't say at that time.

Q. Did you ever spend the night there? A. No, sir.

Q.—Well, eventually you came back to New York. And did you see Joyce? A. I did. 1580

Q. Where did you see her? A. When I came back I met her I think at Pauline's place. Pardon me, if I get Betty and Pauline mixed up it is not my fault.

Q. What did you usually call her? A. Well, most of the time, I very seldom spoke much to her, I spoke very little, but when I did I would call her Pauline, but from hearing others call her Betty I called her Betty.

Q. Did you live with Joyce after you came back from Chicago? A. No, sir.

Q. Did you ever live with her after you came back? A. Yes, sir. 1581

Q. When did that start? A. I came back, from the record of that hotel bill, to the best of my memory—

Q. Go ahead. A. It would be, if I am not mistaken, that is the 24th of June that I came back.

Q. Yes? A. And it took me, at that time I had an apartment at the Park Central Hotel, you have the lease there, and it took me I will say four or five or three days, I couldn't say exactly, approximately a few days to furnish

*A. Krulewitch, for Deft., Direct.*

1582 up the apartment for Joyce at 515. So that the first time that apartment was furnished was about the latter part of June.

Q. Did you and Kay move in there? A. No. Joyce lived there.

Q. I mean you and Joyce. A. Joyce lived there, and I came there.

Q. Now, how long did you and Joyce live there? A. Not over two months.

Q. Then what happened? A. I took an apartment on 174th Street which was a much better apartment, and 1583 Joyce moved in there and I, I could say, half moved in with her.

Q. Will you explain what you mean by half moved in? A. Well, I would stay there three or four nights a week with her and a couple of nights I would stay home at the Park Central.

Q. Who lived at the Park Central? A. My mother, brother and I.

Q. During this time what was the state of your relations with Joyce? A. Well, by that time I became in love with her and I wanted to move in with her. And it seems she 1584 used to say, "Your mother will get angry." And, in fact, I wanted to live with her, and she was hesitant at that particular time.

Q. Well, did you and she confess your love toward each other? A. I did, and meant it.

Q. During that time did you give her any money? A. I gave her a diamond solitaire ring. I paid \$420 for it—believe it was a carat and a quarter, similar, I am not sure. I know it was something like that, a carat and a half I think or a carat and a quarter stone. I gave her a 56-stone dia-

*A. Krulwich, for Deft., Direct.*

her ring, small, little stones, about—I gave her that. I don't know— 1585

Q. Was this during the time that she was living at 174th Street? A. That is correct.

Q. Did you have any discussion with her about marriage? A. We did.

Q. What was said? A. Well, we were discussing marriage four or five times, I can say four or five different times. And it seems that she was very sick, it seems that she was coughing all the time, she wanted coffee and she was a continual smoker, and I tried to get her to stop the smoking; and it seems she was nervous. And I took her time, the first time I believe we went to the Medical Center on 168th Street, somewhere there, and we asked for a specialist and they recommended us to some doctor, and the doctor examined her and he said she is a very nervous person, she has a bad bronchial condition and she needs rest. Then I suggested to her—no; if I am not mistaken, the doctor gave her some kind of medicines. What did they call them at that time? They were just coming—vitamins, vitamins, that is, if my memory is correct, at that time, and she was taking these different medicines. Then, I don't remember after that, but I remember she going back to this doctor twice, and then she said to me that the doctor didn't know what he was talking about. 1586

Q. You have not answered my question, Mr. Kay. My question was, did you have any discussion with her about marriage? A. Yes. 1587

Q. What was said? A. Well, I asked her at that time where her people were, and we discussed about her folks, and she knew where my folks were. I had told her. And I asked her if she didn't want me to live with her, was it

*A. Krulewitch, for Deft., Direct.*

1588 because of not being married, and she said, "No." She says, "Let us continue this way for a while, I want to be sure of myself," she says. She says, "There is no question I love you, but I want to be sure of myself." She says, "It is a very steep step to take."

Q. Now, summarizing, if I understand it—

Mr. Hilly: I object to any summarization of any testimony, if your Honor please.

Mr. Todarelli: I assure Mr. Hilly he won't object if he hears the question.

The Court: No. Let us hear the question.

1589 Q. I just want to say, you and she continued this relationship at 174th Street? A. That is correct.

Q. That is all. Now, did there come a time while you were continuing this relationship there when she disappeared? A. That is correct.

Q. About, approximately, when was that? A. Some time October or November.

Q. That is 1939? A. Yes. She didn't come home.

1590 Q. And what did you do? A. I made inquiries. I waited well, it was the custom for her to stay out a day or two with her girl friend if I were busy. So I didn't think anything of it for the first day or two, but the third time, the third day when I didn't hear from her or her girl friend, neither one was home, I then made an inquiry.

Q. What did you eventually find out? A. I found out that she was sent to Westfield State Farm.

Q. How did you find that out? A. Through some attorney.

Q. What did you do? A. I wrote a letter to the Westfield State Farm some time in November, 1939.

*A. Krulewitch, for Dist. Direct.*

Mr. Todarelli: (To the clerk) Do you have those exhibits of the Westfield State Farm that were marked for identification? May I see them, please? 1591

The Clerk: Yes.

Q. I show you Defendant's Exhibit E for identification and ask you if this is the letter that you wrote to Westfield State Farms? A. That is correct. That is in my handwriting. That is correct. I wrote that.

Mr. Todarelli: I offer this in evidence, your Honor.

Mr. Hilly: That is objected to, if your Honor please. 1592

The Court: Objection sustained.

Q. Well, looking at this letter, Defendant's Exhibit Z for identification, does it refresh your recollection as to when you sent that letter? A. November 20, 1939.

Q. All right.

Mr. Todarelli: May I assume, your Honor, so as to save time, that if I were to offer the others that your Honor's ruling would be the same?

The Court: That is right.

Mr. Todarelli: All right, sir.

Q. Now, you said that you wrote that letter November 20, 1939. What did you do after that? A. That I can't answer you. You mean in regard to— 1593

Q. In regard to Joyce, A. Well, at that time, when I wrote that letter, I was under the impression her name was Ann Walakowski, and in that letter—

Q. Never mind what was in the letter. A. Oh.

Q. What did you do, Mr. Kay? A. Then when I received an answer that I was not allowed to visit her, I went to—I think I went to the institution first and made an in-

*A. Krulwich, for Dett., Direct.*

1594

quiry, and they told me the only way I could see her or get any information was to go to Albany, New York, and go to the Department of Correction, and I went to the Department of Correction and told them the story that I was supposed to marry this girl and I would like to give her a visit to find out what this was all about, why she is in there. They granted me permission, with an understanding that they would take my fingerprints and if I had no criminal record they would allow me. They then sent me a pass, a special pass to go to visit her.

1595

I went to the institution and I visited her. At the institution I learned that she was there for being an incorrigible girl. That was the information given to me. And they told me that she was sent there for being a wayward minor. That is all they would tell me.

And then I spoke to her in the presence of a Miss Murphy, who is a matron there. And I told Miss Murphy that I wanted to marry this girl. And I told Miss Murphy I would like to know how long she was going to remain at that institution. And she said it was not up to her but it was up to the superintendent of the institution, a Mr. Kane.

1596

I went in to see Mr. Kane after the visit with Joyce who assured me that she was there for no wrong, she assured me of that, that it was just running away from home, she couldn't get along with her mother and so forth. I saw the superintendent, Mr. Kane, of the institution, and Mr. Kane told me in five months' time she would be released if she behaved herself and was a good person.

And then we had different correspondence, I don't remember what it was, and then at the end of the fifth month or sixth month she was not released. I wrote a letter to the institution asking why. I received a reply for me not



*A. Krulwich, for Deft., Direct.*

write again. I couldn't understand it and I went up to the institution again. And I found that the man who had made me this promise, the superintendent, Kane, had died; there was a new superintendent there by the name—I don't remember—and this new superintendent told me that she would have to do a longer time than the five months that was provided from the other superintendent. And there was nothing further I could do until the end of that five months, which I believe went into December. 1597

And in December I hired an attorney, and I made an application for a writ of habeas corpus to release the girl from the institution, and at that time I believe in the application I told them— 1598

Q. Well, never mind what was in the application, Mr. Kay. You just got a writ out; is that right? A. That is right.

Q. You attempted to get her out? A. That is correct.

Q. And was the writ dismissed? A. The writ was dismissed.

Q. When did the girl get out? A. The following morning. Before the writ was dismissed the judge said he was going to dismiss it on account of the grounds that I had were harmful to the institution, but he released her the following day. 1599

Q. All right. Joyce testified that she was there at Bedford for one year, one month, one week and one day. A. That is approximately right.

Q. During that 13 months or so what did you do? A. Well, I continued on with my business.

Q. Working in the same way? A. Yes.

Q. Did you send Joyce any money up there? A. Yes—

*A. Kulewitch, for Detl., Direct.*

1600

no, I left some money for her at the institution and they returned it to me saying I was not allowed to do that.

Q. Did you take up with any other women during the time that Joyce was there? A. I believe it was during August, I believe it was during August, some time in the summer time I did, with a girl, for about two weeks, three weeks, maybe.

Q. What was her name? A. Bernice.

Q. What happened to the apartment at 156th Street—174th Street during the time that Joyce was up there? A. I continued that.

1601

Q. Did you live there yourself? A. I did.

Q. And did there come a time when you moved from there? A. That is right.

Q. Was Joyce back in New York when you moved from there or was that after she came back; was that before she came back? A. No. I moved before she came back.

Q. What was that address? A. 325 East 77th Street.

Q. Was that a furnished apartment? A. No, sir.

Q. Did you furnish it? A. I did.

Q. When Joyce was released, do you know what she did? A. I received a letter from her sometime in January, asking me to come up to see her at Canandaigua, New York.

1602

Q. Did you go there? A. I did.

Q. Did you meet her family? A. I did.

Q. What did her family consist of? A. Mother, father, and brother that I knew, I saw.

Q. Did you talk with the family? A. I did.

Q. Where did you stay while you were at Canandaigua? A. The first time I came there, it takes about nine, eight or nine hours to get there, I took a room at the Hotel Canandaigua, and after I took the room at the hotel—the train gets in around 6—

A. Krulowitch, for Dett., Direct.

Q. We don't want to know that, Mr. Kay. A. I took a room at the Hotel Canandaigua, the first time I went there.

1603

Q. All right. Did you visit the family while you were there? A. All day.

Q. Did you take any gifts to anybody up there? A. I went to the grocery—when she told me the story that her people were on relief and things were very bad for them, she and I went into the grocery, some part of that day, and I bought I believe 40 or 50 dollars worth of groceries and food for the family.

Q. Did you give Joyce anything? A. I had brought up with me a coat for Joyce, because in the letter she had mentioned it; and that coat was purchased, I can't think of the name, it is a large women's house—

1604

Q. We don't want to know where it was purchased. Purchased in New York, was it? A. Yes, sir.

Q. All right. You gave it to Joyce? A. Yes, sir.

Q. Did you and Joyce discuss the reason why she had gone to Bedford? A. No. We did, but not at that time.

Q. I mean, during your visit to Canandaigua. You did not? A. No.

Q. Did Joyce tell you about any of the conditions of her release? A. No.

1605

Q. At Canandaigua? A. No.

Q. How long did you remain there? A. You mean the first time I went up?

Q. Yes. A. I went up about six or seven times.

Q. Did you during the course of any of these visits up there discuss the conditions of her release from Westford? A. Yes.

Q. What was said about that? A. At one time we ran

*A. Krulwich, for Detl. Direct.*

1606

into the probation woman officer, her name was Miss Standish; and Miss Staudish, Joyce and I took a ride down to the lake. And I asked Miss—I told Miss Standish that I was going to marry this girl, but being that she was on parole I asked her whether it was all right for me to see her or not. She said, "It certainly is, and you can see her at any time you want," at the end of the conversation, which took an hour. She was satisfied that my intentions were good with the girl and she allowed me to visit her any time I wanted to.

Q. Did you talk about marriage to the family at all?

1607

A. Yes. Oh, sure.

Q. What was said? A. During some of these visits I spoke to the mother, and I also spoke to the father, very little, the father spoke very little about it, but they welcomed me right in their house as a son. And, in fact, after that first visit I stayed at the house everytime I went there.

Q. Did Joyce tell you when her parole would expire?

A. The end of March I believe it was.

Q. During that time did she tell you where she was required to remain? A. In Canandaigua.

1608

Q. And after her parole expired in March—1941 would that be? A. March of 1941.

Q. All right. When that expired what did Joyce do, if you know? A. She came down to New York.

Q. Where did she go? A. To 325 East 77th Street, with me.

Q. During the trips to Canandaigua had you told her anything about renting this apartment at 77th Street? A. Oh, sure.

Q. Did you and she live together? A. We did.

*A. Krulawitch, for Deft., Direct.*

Q. Did you spend part of your time there or all of your time? A. All of my time.

1609

Q. Did you continue to engage in business during that time? A. I did.

Q. Did you see any of the family after you came down to New York? A. Well, the latter part of April her mother came down to New York and stayed here about eight or nine days, maybe a week, between a week and ten days.

Q. Who paid her expenses? A. I did.

Q. What was Joyce's physical condition at the time she came down to New York? A. Well, she was getting very thin and she wasn't in good health at all. After she was here in New York about two or three weeks, on one night I had to call the doctor from the building, at 325 East 77th Street, because she couldn't stop coughing. And the doctor got her to sleep and said she needed rest.

1610

Q. Now, during that period from March until October did you take her to any other doctors? A. March until October?

Q. Yes. A. Oh, I must have taken her to plenty of doctors.

Q. And what did they advise? A. Well, most of the doctors advised for her—they said that the winter climate kept her condition worse, aggravated it. And then I suggested to her, and at the doctor's instance, for her to go to Virginia Beach and see if the climate would do her any good. And I gave her a duebill on the Chamberlain Hotel some time during the summer I believe it was for two weeks or ten days to two weeks, something like that. I told her to make a boat trip down and a boat trip back. And I bought the tickets for her. They went down, she and her girl friend went down to Virginia Beach.

1611

*A. Krulwich, for Deft., Direct.*

1612 Q. When you say a girl friend, you mean Betty? A. That is correct.

Q. I forgot to ask you; Mr. Kay, this question: During the year, 13 months that Joyce was at the Westfield State Farms, did you see Betty? A. Very, very seldom.

Mr. Todarelli: Your Honor, I don't want to ask for a recess but I do want to ask for one minute.

The Court: Yes. I think it is time for our afternoon recess. We will take a short recess.

Mr. Todarelli: Thank you.

(Short recess.)

1613 Q. The last question I asked you I believe was whether or not you had seen Betty during the year Joyce was away and you said very, very infrequently? A. I said very seldom.

Q. All right, infrequently, I said. After Betty came back to New York you started living at 325 East 77th Street, and did you see Betty? A. You mean after Joyce came back?

Q. Yes. A. Yes.

Q. And did Joyce see Betty? A. Yes.

1614 Q. How often? A. Quite often, and I should judge three or four nights a week.

Q. Now, did there come a time after she came back when she went to Virginia Beach? A. Yes, sir.

Q. And what caused that, Mr. Kay? A. The doctor that she went to suggested it, and I told her I thought probably it would be best for her, and I bought the tickets for her, and gave her a due bill at the hotel.

Q. What hotel? A. The Chamberlain.

Q. And was that one of the nicer hotels at Virginia Beach? A. Oh, yes.



*A. Krulowitch, for Deft., Direct.*

Q. Who went with her? A. That is at Old Point Comfort. 1615

Q. Yes, and who went with her? A. Betty went with her.

Q. Did you have any conversation with Joyce before she left as to the length of time she was to stay there? A. Yes.

Q. What was said? A. Until she felt better she should stay there.

Q. And did you have any conversation about what would happen on her return? A. Well, we were discussing at that time if she fully regained her health that we would be married. 1616

Q. Now, while she was down at Virginia Beach did you talk with her on the telephone? A. I called her up at least every second day.

Q. And what did she say? A. She told me she was having a nice time, and she was feeling a little better, and I believe on one of the calls—I must have called I should judge four or five times, and she was gone about ten days, about ten days to two weeks she was there, and I must have called five or six times, and one of the times she told me she wasn't feeling so well, but the rest of the time she told me she was feeling a little better, and I asked her did she need any doctor there and if she did to go to him and see what his opinion was, and she said she didn't think so, but she was feeling all right, and as long as she continued feeling that way it was all right, but she did say that if she didn't—if she did get sick she would go back and go to a doctor. 1617

Q. Well, when she did come back did you notice any change in her physical condition? A. No, when she came

*A. Krulewitch, for Deft., Direct.*

1618 back and she came off the boat, she came off alone, and I met her and I waited about a half an hour or 20 minutes to a half an hour, and then Betty came off the boat, and then we went up to—I believe we went back to 325 East 77th Street to discuss the trip.

Q. And did you continue to live there at 325 East 77th Street? A. Yes.

Q. And what did Joyce do during the time that you were living there? A. She was taking care of the house. It was a four and a half room apartment.

Q. Did she do anything else? A. No.

1619 Q. Did she go there? A. Oh, occasionally. 'We would go out most of the time.

Q. Did there come a time after she came back from Virginia Beach when you went on another trip with her? A. We went to Florida, and I went on several trips in between.

Q. Trips in between, meaning what? A. Oh, I took her to Atlantic City. I would go down there probably, I would say, two or three days a month on business. We done a very large business there and I would go down two or three days a month, and I took her with me on those trips. I would spend two or three days there and bring her back again.

1620 Q. Did you ever go to the Adirondacks with her? A. Yes, I had an account there, the Leland House, which I used to do the advertising work for, and I took her up there at the beginning and end of the season when the hotel was open.

Q. That was when, in the summer of 1941? A. Yes.

Q. During the summer of '41 did you and Joyce discuss any marriage? A. Oh, yes.

A. Krulowitch, for Deft., Direct.

Q. And what was said? A. Well, that was all about the same time. When she came back and during those trips, and some time she didn't feel right and I took her to a doctor who suggested that she try a warm, dry climate, such as Florida.

1621

These doctors I tried to get, but it seems they moved or something, and I tried to get the dates if I could from them. I have made every effort and I couldn't possibly get them, because it was eight years ago, six years ago, rather.

Q. Well, at any rate, you say the doctors advised a warm, dry climate? A. Yes.

Q. And did there come a time when you went to Florida? 1622

A. Yes.

Q. In the summer of 1941? A. Yes, we went together. She and I went together.

Q. All right. A. And Betty went with us, and the three of us went to Florida by automobile. She and I went down. I was on a business trip and Pauline was interested in getting a hotel, a small place, to rent out rooms, and either to buy it or lease it, and I went down to close some contracts. It was the beginning of the season, and I figured at the same time she would have the benefit of the season and the beach while I was there, and I knew it was—I felt it would do her a lot of good to do that, and we stayed on that trip about three weeks.

1623

Q. How did you go down? A. Automobile.

Q. And did Betty look for a place while you were in Florida? A. Well, Betty was busy with the real estate people there. Every afternoon she would go over there and see them, going around looking at places or whatever they had to rent. I didn't know what it was, but I know she didn't get anything.

*A. Krulewitch, for Deft., Direct.*

1624 Q. And what did Joyce do on the trip? A. Joyce was down at the beach, and I was going around to the hotels, and I would come down and meet Joyce.

Q. Now, on your return to New York, did you continue to live at 325 East 77th Street? A. Yes.

Q. And did Joyce take any other trips that you can remember? A. Yes, I took her to Washington, and I took her up to her mother's. On two occasions she spent a few days, probably four days to a week on each occasion, and I took her twice to her mother's, and then I would come up and get her and bring her home.

1625 Q. Did you have any discussion with Joyce about marriage and her mother? A. Yes, the final discussion that I had with her on that was in September; or some time I went down to Florida on a business trip to try to close a few contracts with the hotels for the duebills for the winter months, and at the same time I told Joyce that if she went to Florida for the winter and she got well I would come down there and we would get married, and I would buy a house there and we would live in this house.

And I said, "Now it is up to you," to herself, encouraging her to take care of herself. I said now it is up to herself, to get herself well quick.

1626

And then in the latter part of September, I think it was, I went to Miami myself, and on this trip, this was the trip that I rented this building. I got the El Chico Hotel, but before I left Pauline Hillson gave me \$400 in cash and asked me while I was down there—she knew I would be there about a week—if I saw anything, and she would leave it up to my discretion and my honesty to get her a good buy in renting a hotel with about 12 or 14 rooms.

*Krulwich: for Deft., Direct.*

And while I was in Miami I made one or two inquiries— 1627  
I didn't devote much time to it, but it happened to be on a holiday night, and I was going to the synagogue and I saw this sign, and this synagogue was located about five blocks off from where I was located at. I was at the Lelandton Hotel, and I went up and I saw this sign on the hotel for rent, and I figured I had about half or three-quarters of an hour time, and I walked into the bicycle store there. He was downstairs and I asked him about the hotel—

Q. You are now talking about the El Chico Hotel? A. That is correct.

Q. And the man in the bicycle store was who? A. I 1628  
know him as Mr. Peacock.

Q. Did you know him then? A. No, sir, I never saw him before.

Q. What conversation did you have with Mr. Peacock?

A. I asked Mr. Peacock who the owner was, and if he knew anything about the rooms or how many rooms it contained or what it was.

He told me he did know, but he didn't have the keys. He said, "Mrs. Blumberg, who is the owner, lives up the street, about two blocks, but her mother lives next door, who has the keys, and if you want to see the place go right 1629  
next door and ask her mother."

I thanked him, and he was very nice, and he says, "Glad to help you," or something similar to that, and I went out.

Q. About how long were you in there? A. Oh, just those couple of minutes.

Q. Did you say anything to him or did he say anything to you about operating a house of prostitution? A. No, sir.

*A. Krulewitch, for Deft., Direct.*

1630

Q. Was there anything said in any way, shape, manner or form to indicate that you or anybody else was going to rent a house of prostitution— A. No.

Q. —at the El Chico Hotel? A. No.

Q. You heard him so testify, did you? A. I did.

Q. And was there any truth whatever in that?

Mr. Hilly: Objected to. Calls for the characterization of another witness's testimony.

Mr. Todarelli: Very well. All right.

The Court: Objection sustained.

Q. At any rate, you deny that?

1631

Mr. Hilly: Objected to.

The Court: He has a right to deny it.

A. Mr. Todarelli, pardon me for asking this: Did you ask me did I hear him testify to that?

Q. Yes. He said that was his opinion.

The Court: Strike that answer out.

Q. But you deny that you said anything— A. Definitely, never said anything.

Q. —along those lines? A. Definitely not.

1632

Q. All right. Let me go back just a moment, please, and then I will bring you back again, when you left for Florida you say in the latter part of September, do you know what business—and Betty gave you this \$400, did you know about the business she was in at the time? A. Yes, sir.

Q. What business was she in? A. She had a restaurant.

Q. What restaurant was it? A. The Bloom Garden Restaurant.

Q. The same cafe? A. The same cafe, called the Bloom Garden Cafe.

Q. Now, after you left Mr. Peacock did you go next door? A. I did.



*A. Krulwich, for Deft., Direct.*

Q. Whom did you see there? A. I saw Mrs. Blumberg's mother. 1633

Q. Did she live there? A. She did.

Q. What did you say to her? A. I told her I would like to see the rooms, and I would like to see the inside, and I would like to get an idea of what they are asking for it.

She came out with me and opened the door and we went up and I looked at it. It consisted of five two-room apartments, maybe for two-room apartments, or one two-room apartment, similar to that, with a little kitchenette.

Q. Was it furnished? A. Partly.

Q. And after you looked it over what did you do? A. 1634  
I then went up to Mrs. Blumberg and I had a talk with her.

She wanted \$1200 rent and wanted to give me a one-year lease. I did not want to accept those terms or that rent. I did not think in my opinion that it was a bargain at that, and after dickering around for about 20 minutes she agreed to give me a five-year lease at \$900 a year, and I told her that I was representing Miss Pauline Hillson of New York.

I gave her my card and I asked her whether or not she would wait until the next day to—before anything definite could be done, so I could get in touch with Pauline Hillson, and she said she couldn't, that other people had been there to see her, and if I gave her a deposit she knew that my—I was acting then in good faith. 1635

I said, "Well, I didn't want to give you the deposit, because if it is not acceptable to the person in New York, Miss Hillson," I said, "I would be out the \$25 myself".

Well, she assured me that I wouldn't be, and I gave her a \$25 deposit, and with the understanding that the balance

*A. Krulewitch, for Deft., Direct.*

1636 of \$275 would be paid in the event of the closing of the lease the following day, and she gave me a receipt.

Q. Without wasting the time of the Court and jury, you saw the receipt that went into evidence? A. Yes, that is the receipt that she gave me.

Q. Referring to Exhibit F, that is the receipt she gave you? A. Yes.

Q. A photostat of the receipt she gave you? A. Yes.

Q. All right. That receipt is dated October 1, 1941. After you left Mrs. Blumberg and gave her the \$25 what did you do? A. I went on to the synagogue.

1637 Q. Then what did you do? A. The following morning I went down and met Mrs. Blumberg and when I got there she told me to meet her at the hotel—

Q. Before that, you told Mrs. Blumberg that you wanted to telephone or get in touch with Miss Hillson? A. You mean that night, yes.

Q. And did you get in touch with Miss Hillson? A. Yes, I called New York and got in touch with Miss Hillson and I told her what I had done, and I asked her had she wanted it or not, and she had to make up her mind, I said, and I understand it is hard—

1638 Q. Well, did she make up her mind? A. She did and told me to close it.

Q. And did you go down the next morning? A. The next morning I went down and I closed it.

Q. And you signed the lease Pauline Hillson per A. Kay, is that right? A. I did.

Mr. Todarelli: May I have that, Mr. Hilly?

Mr. Hilly: Yes.

The Witness: And I put my card with the lease.

Q. Did you have written authority from Miss Hill-

*A. Krulewitch, for Deft., Direct.*

to sign her name? A. Well, I had her money, her money. 1639  
to do it.

Q. Will you answer my question? A. No, oral authority.

Q. Oral authority, all right. And Exhibit 7, Government's Exhibit 7, is the lease that you signed, is that right?

A. That is correct.

Q. Pauline Hillson per A. Kay? A. That is correct.

Q. All right. After you signed the lease how long did you remain in Florida? A. About four more days.

Q. And during those four days what did you do? A. I closed a couple of contracts for advertising. 1640

Q. In connection with your own business? A. That is right.

Q. By the way, did you drive down on that trip— A. No.

Q. —or did you go down by train? A. I went by train.

Q. All right. And where did you go after you left Florida? A. Came back to New York.

Q. Did you see Pauline? A. I did.

Q. What did you tell her? A. I saw Pauline and I gave her the keys; I gave the lease; I gave her the receipt, and I told her that I think she got a very good buy; I think that she could make money there because it was directly opposite the station, and there was a lot of people coming down, and I thought they would have a good season in Florida, and discussed rentals, what the value would be, and I told her I wasn't familiar with real estate in Florida as well as I was in New York, but in my opinion I thought she got a very good buy, approximately 12 rooms at \$75 a room a year; that she should get that out at least in two or three weeks. 1641

*A. Krulewitch for Deft., Direct.*

1642 Q. Now, you gave Mrs. Blumburg all together according to the lease \$300? A. That is correct.

Q. Did you give her back the money that you had left from the \$400 that you got from Pauline Hillson? A. Oh, yes, I gave her money back.

Q. Did you see Joyce when you came back? A. Yes.

Q. Did you go back to live at 325 East 77th Street? A. Did I go back?

Q. When you came back from Florida you went back to 325 East 77th Street? A. Yes.

1643 Q. Did you talk with her about what happened down in Florida? A. I did.

Q. What did you tell her? A. I told her about the closing of the lease and almost everything I had done in Florida. I told her I closed a couple of contracts, about the lease, and about that I think it is a nice place, and I think that Pauline ought to make real money with it, and I even went further by saying—my memory is a little clear on that—that if she does make money I will get all the credit for it, because I really got her something worth while.

1644 Q. Did you say anything to Joyce at that about about her going down to Florida? A. Yes, I said it may be a good idea that when she goes down that you go with her, you love company.

Q. Wait a minute. You say "when she goes down that you go with her". A. Yes.

Q. Now, that is a little bit ambiguous. When you say "she" meaning who? A. Pauline.

Q. When Pauline goes down that Joyce goes with her. A. No, I was suggesting that maybe, see, she stay there all winter, and I was sure, I felt sure that her health would

*A. Krulewitch, for Deft., Direct:*

be improved if she took a good rest, and I also told her the possibilities of getting a doctor on account of this, her having the place, and things in general, probable things in general if she would want to do that.

1645

Q. Did you talk with both Betty and Joyce together about that? A. Oh, yes. Betty insisted that she come down and I come down. And she was very happy about it.

Q. Were any plans made by either Betty or Joyce or by both as to when they would go down? A. I believe they originally arranged to go down on October 10th. I believe that is when it was.

Q. Did they go down on October 10th? A. No.

1646

Q. What happened? A. On October the 9th I gave Joyce some money, I don't remember the exact amount, and told her to buy two tickets, one round trip ticket for me and one ticket one way for her, because the tickets were only good for 90 days or 60 days, 60 days or 90, and I told her to buy one round trip ticket for me and one way for her, and at the same time Pauline was buying her own ticket, that they should get the three tickets, which she did.

Q. And then— A. And then they changed their mind about going on the 10th. How that happened was, Joyce had to go to the doctor, she took very sick. And Joyce was in bed at 325 East 77th Street, and I called in the doctor from upstairs. And they put it off, the trip, didn't even think of going until later in October.

1647

Q. And was it after she became well that the tickets were bought? A. No. After she became well we went down and made the reservation for the 21st.

Mr. Todarelli: May I have those tickets?

Mr. Hilly: Surely.

*A. Krulwich, for Def., Thragt.*

1648 Q. These tickets called for passage on The Champion on the 21st. I am referring now to Government's Exhibit 17. You don't deny, do you, that you paid for Joyce's passage down and also for your own? A. No, sir, I paid for it.

Q. All right. But you didn't actually buy the ticket? A. That is correct.

Q. Did there come a time shortly after the reservations were made for October 21st when some baggage was checked? A. Prior to?

Q. Prior to October 21st? A. Yes, sir.

1649 Q. I show you Government's Exhibit 21 in evidence and I ask you if that refreshes your recollection as to whether or not you had anything to do with the checking of baggage? A. I checked this baggage and I signed this slip.

Q. When? A. On October 18, 1941.

Q. Whose baggage was that? A. I believe Joyce and Pauline. It might have been all Joyce's; I am not sure. But I know it was Joyce's.

Q. I show you Government's Exhibit 24 and I call your attention to the fact that that calls for five pieces and I ask you did you check five pieces of baggage at that time, or do you remember? A. Yes. Well, if it is on that slip I must have.

1650 Q. Did you check any baggage of your own at that time? A. At that time? No.

Q. Did there come a time when the two girls left Miami? A. They must have left.

Q. Were you with them when they left? A. No, sir.

Q. Where were you when they left? A. Well, I don't know, I can't remember the exact arrangement that was made, but I do know that I went to Baltimore, and that was on October 21st. Before I went to Baltimore I went



A. Krulwich, for Deft., Direct.

Doehler Furniture Company, in New York, and I bought 1651  
some furniture there, booths, and I don't know how long a  
time I spent there, but I know I was there.

Q. I show you this paper, Mr. Kay, and I ask you to  
tell the Court and jury what it is, just briefly describe it.

Mr. Hilly: Objected to, if your Honor please.

Mr. Todarelli: I don't want him to read from  
the paper.

The Court: Just identify it.

Mr. Todarelli: That is all.

A. This is a bill from Doehler to me on October 21, 1941.

Mr. Todarelli: I offer it in evidence. 1652

Mr. Hilly: I object to that, if your Honor please.

The Court: Let me see it. What is the objection?

Mr. Hilly: I don't think it is relevant, nor is it  
competent, nor is it material.

Mr. Todarelli: The only purpose for which it is  
offered, your Honor, is to corroborate the defendant  
that he bought some furniture on October 21st here  
in New York.

The Court: All right. It may be received in con-  
nection with the testimony of the defendant.

(Marked Defendant's Exhibit MM.) 1653

Mr. Todarelli: Ladies and gentlemen of the jury,  
Exhibit MM shows that on October 21, 1941 Doehler  
Metal Furniture Company of 122 Lexington Avenue,  
New York, sold to Al Kay, 1465 Broadway, a double  
passenger booth seat, with the tax, \$50.26.

Q. Did that booth seat have anything to do with Florida?

A. No.

Q. All right. Now, after you went down to the Doehler  
people on October 21, what did you do then? A. Well, I

*A. Krulewitch, for Deft., Direct.*

1654 can't remember the day, but I do know I left for Baltimore and I arrived in Baltimore I should judge around 6, 7 o'clock at night, to the best of my memory.

Q. Did you at the time that you left New York have a ticket for The Champion? A. I did.

Q. Is that the round trip ticket that is in evidence? A. That is correct.

Q. Did you use that between here and Baltimore? A. I did.

Q. You say you did use it between here and Baltimore? A. No, I don't know whether I used—I don't think you were allowed to use that, but I think I bought a new ticket from New York to Baltimore.

1655 Q. Do you know what time The Champion was due in Baltimore in October, 1941? A. I wouldn't know.

Q. I show you this timetable, Exhibit II, and I ask you if you remember the time that The Champion was due in Baltimore? A. From the record, 7:13 p. m.

Q. Did you arrive— A. It was to leave at 7:13.

Q. Did you arrive in Baltimore before then? A. Oh, yes.

1656 Q. You did not use The Champion then, did you? A. No.

Q. What did you do when you arrived in Baltimore? A. I took a cab and went to my uncle's place.

Q. Is that the Samuel Levenson who testified? A. That is correct.

Q. I show you this photograph marked Exhibit 21 and I ask you if you recognize that as your uncle's place of business? A. Yes. It is up on the second floor here.

Q. And are there any pieces of furniture visible from the street? A. No.

*A. Krulewitch, for Deft., Direct.*

Q. Does he occupy any part of the ground floor? A. 1657  
No.

Q. Were Betty and Joyce with you when you arrived at your uncle's place on October 21? A. No.

Q. How long were you at your uncle's place? A. Between—I couldn't say, but I figure about three-quarters of an hour to an hour; maybe around that time.

Q. When you left your uncle, where did you go? A. I think I left and took a cab and went to the station.

Q. What did you do there? A. I tried to find out how I could get to Miami.

Q. And did you? A. I did. And I left for Miami. 1658

Q. Pardon me? A. And I left for Miami.

Q. Do you remember approximately what time it was that you left for Miami? A. It might have been. I know it was at night; I don't know when.

Q. When you say "at night," you are talking now about the night of October 21? A. That is correct.

Q. Do you remember when you got to Miami? A. I think it was 7 o'clock in the morning or 6 o'clock in the morning or 8 o'clock in the morning, something like that.

Q. When you got to Miami, what did you do? A. I went over to the El Chico Hotel. 1659

Q. Whom did you find there? A. I found Joyce there, and Betty there.

Q. Anybody else there? A. And Betty.

Q. Well, I think you testified that you took a train on the night of the 21st? A. Yes.

Q. Did you arrive in Miami the next morning? A. I arrived on the 23rd, to the best of my memory it was the 23rd, or 6 or 7 o'clock in the morning, or it might have been midnight; I am not sure. But I know, it might have been

*A. Krulwich, for Post, Direct.*

1660 around, maybe it was midnight of the 22nd or early morning of the 23rd, I am not sure.

Q. At any rate, you did not arrive on The Champion, did you? A. Oh, no.

Q. Oh, by the way, The Champion gets in according to this timetable, Mr. Kay, or is scheduled to get in at 4:55 in the afternoon. You did not arrive at 4:55 in the afternoon? A. No.

Q. You say you went over to the El Chico and you find Betty and Joyce there. Then what happened? A. Then they started to discuss about fixing up the place, getting it cleaned, and hiring someone to scrub it down and everything. And I remember some baggage coming in, baggage came in. And I remember—let me see. Oh, they started to hang up curtains and they started to—they bought—Pauline bought linoleum, and the linoleum man came up, the baggage man came up.

Q. How long were you in Miami during that visit? A. I was there until the 26th.

Q. Now, during the three or four days that you were there— A. I might have been—what?

Q. During the three or four days that you were there— 1662 where did you stay? A. At the El Chico.

Q. Where did Joyce stay? A. With me.

Q. Where did Betty stay? A. At the El Chico.

Q. Did any prostitution take place at the El Chico? A. No.

Q. What did you do while you were there these three or four days? I mean in Florida generally. A. I helped them fix up the place and went around to different places of amusement at night.

Q. Did you rent a car while you were there? A. I did.

*A. Krulwich, for Deft., Direct.*

Q. The date on the exhibit is October 24th I believe. 1663  
Would that be approximately correct, to your recollection?

A. I rented the car for two days, the 24th and 25th, because I knew I was going back the 26th.

Q. I show you Government's Exhibit 6-A—

Mr. Hilly: There are two in there. The one on top is 6-B, Mr. Todarelli, I think.

Mr. Todarelli: Then 6-A is the one I want.

Mr. Hilly: Yes. 6-A is the one you want.

Q. —Government's Exhibit 6-A, which shows that you rented this car on October 24th for two days and you paid

\$11. A. That is correct. The 24th and the 25th. 1664

Q. And that is your signature? A. That is my signature.

Q. What was Betty's physical condition at the time?

A. You mean Joyce's?

Q. Joyce's? A. At that time?

Q. Yes. A. Poor, very poor.

Q. Did you take her to any doctors? A. Well, the first time I got there I took her to a doctor, to a doctor who gave her some medicine to take, and he said that if she stayed there one winter she would be a new person, and I asked her to go back and visit this doctor. He was a very fine experienced doctor with her condition, and the doctor—I couldn't stay there and keep going back and forth, but that time was the only visit I had made at that time there with her. 1665

Q. Do you know the doctor's name? A. Well, I can't think of his name. I can't think.

Q. Was it Dr. Ferguson? A. No.

Q. Was another doctor? A. Yes. There was a Dr. Wambel. I know there was another one, but not at that time.

*A. Krulwich, for Deft., Direct.*

1666

Q. I am talking now about the three or four days that you were there starting with about October 23rd, as you testified, and leaving there approximately on the 26th.

A. Well, I took her to a doctor there, see, and I went, and the doctor examined her and told her that if she could place herself under him she will be all right very quick.

Q. Was anything said about marriage on that visit with her? A. On that visit?

Q. Yes. A. No, it was said before.

1667

Q. I see. But on that visit nothing was said about marriage? A. No, it was agreed that as soon as she gets well and she is all right we were to get married, and she finally agreed to that at that time.

Q. Did you transact any of your own business at that time? A. I don't know whether I did those three days. I might have gone to see a couple of people, but I don't know.

Q. Did you at that time visit any real estate people? A. Yes, Mr. Ross Burton.

Mr. Todarelli: I will ask the indulgence of the Court. Off the record. Where is that paper?

1668

The Witness: You have that confused, Mr. Todarelli. You are now looking for Mr. Wambal. He is a doctor.

Mr. Todarelli: All right. I am sorry. I withdraw that question.

Q. You say you visited a Ross Burton? A. That is right. He was not a real estate broker. He owned real estate.

Q. Did you discuss anything with Joyce about real estate? A. Yes, he took her and showed her a few houses that he had owned, and we were thinking of purchasing one.



*A. Krulewitch, for Def., Direct.*

Q. Now, you say you left on the 26th? A. I believe so 1669  
to the best of my memory.

Q. How did you come back? A. Train.

Q. And did you use the round trip ticket that you had?

A. That is right.

Q. And you got to New York when? A. I must have  
got to New York the 27th.

Q. Now, when you got to New York where did you go  
to live? A. The same place, 325 East 77th.

Q. Did you have any correspondence with Joyce, or  
did you have any telephone conversations with her? A. 1670  
No, no telephone conversations. I sent her a money order,  
no, I think I received a letter first, I am not sure, but I  
received a letter first and then I sent her a money order  
for \$110.

Q. You sent whom? A. I sent the money order to  
Pauline on account of the letter that was sent to me, and  
if my memory is correct there was \$95 due Pauline of  
that money and \$15 I said to give to Joyce. I had given  
Joyce \$50 before I left, that I had practically borrowed  
from Pauline Hillson.

Q. I show you Defendant's Exhibit V-2 and I ask you  
if that is the \$110 that you wired Pauline Hillson? A. That 1671  
is correct, sir. That is the message.

Q. And is that in your handwriting? A. That is in  
my handwriting.

Q. "Tell Pauline to give \$15 to Joyce. Love." Is that  
right? A. Yes.

Q. By the way, do you know what V. D. A. October 18,  
means on this exhibit? A. What day was Joyce's birth-  
day?

*A. Krulewitch, for Dett., Direct.*

1672 Q. I don't know. That was in September. A. That was a different one.

Q. You don't know, is that it? A. No.

Q. On November 9, 1941, did you send another money order to Pauline Hillson? A. I sent a couple in between. This was the gift certificate. I sent this one, yes.

Q. Well, for whom was this money? A. Joyce.

Mr. Hilly: Objected to, the exhibit speaks for itself.

Mr. Todarelli: Oh, no; this man is explaining it, your Honor.

1673 The Court: I will let him answer.

Q. For whom was the \$60 here? A. That was for Joyce.

Q. Why did you send it to Pauline Hillson instead of Joyce? A. Because Joyce couldn't get the money or cash without identification. Pauline Hillson was the owner of the hotel and they knew that she was the owner and she had identification, a bankbook with her, and for that reason and at her request that was. That was at Joyce's request.

The Court: We will now recess until 10:30 tomorrow morning.

1674 (Adjourned to April 23, 1947, at 10:30 a. m.)

New York, April 23, 1947, 10:30 a. m. Trial resumed.

ALVIN KRULEWITCH, resumed the stand.

Direct Examination continued by Mr. Todarelli:

Q: I find, Mr. Krulewitch, that I omitted to ask you about October 18 or October 21. You testified yesterday

*A. Krulewitch, for Deft., Direct.*

that you left on the 21st for Baltimore. I show you Government's Exhibit 22 and ask you if that refreshes your recollection as to whether or not you checked any baggage on October 21st at Pennsylvania Station, New York? A. I wouldn't know from this exhibit.

1675

Q. I then show you Government's Exhibit 23 and ask you if that signature Al Kay is yours? A. Yes.

Q. And did you check baggage on the 21st? A. Yes.

Q. At 3:30 in the morning? A. Yes.

Q. Will you tell the Court and jury whose baggage that was? A. That was mostly my own.

Q. And where had you been before that, before 3:30 in the morning? A. Atlantic City.

1676

Q. And did you have your baggage with you? A. Some of it, yes.

Q. Yes. What did you do after checking the baggage at 3:30 in the morning? A. I think I went back to—I think I went back to the apartment.

Q. 325 East 77th? A. I believe so.

Q. By the way, up to the 21st of October did you know anything about Joyce's prior history except that she had told you about the return to Westfield State Farms? A. No.

1677

Q. Did you know anything about her being at the Hudson Training School for girls? A. No.

Q. I think you told us that you arrived in Miami to the best of your recollection on the morning of October 23, and I think you said that you stayed there approximately a week? A. No, I stayed there about three or four days.

Q. All right. Now, when you came back to New York, I think you said you got there about the 27th, and did you write to Joyce? A. No.

*A. Krulovitch, for Deft., Direct.*

1678

Q. Did she write to you? A. No, I believe she called me up, or I know we got in touch with one another some way, but I don't remember exactly, but she wrote to me and I think I received it on the 28th.

Q. I show you a photostat of a letter and I ask you if you recognize that handwriting? A. Yes.

Q. Whose handwriting is it? A. Joyce's.

Q. And did you receive this? A. I did.

Q. What happened to the original? A. It was lost during one of the trials.

1679

Q. Was it introduced in evidence at any time? A. Yes.

Mr. Todarelli: We do not have the original, your Honor. Perhaps Mr. Hilly will concede that this is a correct photostat.

Mr. Hilly: No, I won't concede anything of the sort, if your Honor pleases. I would like to examine on this particular exhibit.

The Court: As to the admissibility of it?

Mr. Hilly: Yes, your Honor.

Mr. Todarelli: Certainly.

By Mr. Hilly:

1680

Q. Did you say that the original of this letter was introduced at one of the trials? A. Yes, sir.

Q. That the original was introduced at one of the trials? A. Yes, sir, yes, sir.

Q. What trial was the original introduced at? A. I believe in the first and in the second trial.

Q. In the first and in the second trial? A. I believe so.

Mr. Hilly: Mr. Todarelli, will you concede that the original was never introduced in the record?

Mr. Todarelli: I think you are right, Mr. Hilly.

*A. Krulwich, for Deft., Direct.*

Mr. Hilly: Mr. Todarelli will concede then that the witness is wrong in the fact that the original of that letter was never introduced in evidence, if your Honor please. 1681

The Court: Very well. The record will so state.

By Mr. Todarelli:

Q. Mr. Krulwich, I show you this letter and ask you if this letter was ever introduced at any trial? A. Yes.

Q. Dated November 6, just to identify it? A. Yes.

Mr. Hilly: And you make the same concession with respect to that letter. That is a photostatic copy, is it not, sir? 1682

Mr. Todarelli: No, no, no, no. That is the original letter, your Honor. That was introduced at a prior trial, and I am merely asking him to see if I can clear it up.

Q. Are you confusing the letter of November 6th with that of October 27th, Mr. Krulwich?

Mr. Hilly: Objected to, if your Honor please, that is leading.

The Court: It is a leading question, Mr. Todarelli.

Mr. Todarelli: I know it is, your Honor, but I don't know how else to ask it. 1683

The Court: Well, go ahead.

Q. Are you, Mr. Krulwich? A. What is that?

Q. Are you confusing the two letters, that of November 6th and— A. No, they were both introduced, the originals, in the first trial, I am almost sure.

Q. At any rate, is this letter dated October 27, 1941, a true copy of the original letter that you received from Joyce? A. Yes, sir.

Mr. Todarelli: I offer it in evidence.

*A. Krulewitch, for Deft., Direct.*

1684.

Mr. Hilly: If your Honor please, the best evidence of that letter would be the original.

Mr. Todarelli: I understand that.

The Court: That is true.

Mr. Hilly: Now I might ask just one or two questions on this.

By Mr. Hilly:

Q. With respect to the original copy of that letter, what happened to that? A. I don't know. In the first trial I know it was used as an original, it was given to Mr. Wallace as an original and Mr. Wallace made the photostatic copy. If you will notice—

1685

Q. Did Mr. Wallace make this photostatic copy that appears here? A. No, not that particular one, but he made another photostatic copy of it.

Q. He made another photostatic copy of it? A. Yes, sir.

Q. You say that the letter was lost; is that right? A. That is right.

Q. Haven't you previously testified in this court that that letter, the original copy of that letter you sent up to Mrs. Sorrentino's mother? A. No, that is not the letter. Mr. Hilly, let me straighten you out,

1686

Q. No, you don't have to straighten me out on anything. A. No.

Q. You have never so testified? A. Never.

Q. Have you testified with respect to any letter? A. Yes.

Q. You have so testified? A. Yes.

Mr. Hilly: If your Honor please, in view of the fact that there is a concession in the record that the



original of that letter was never introduced in evidence—

1687

Mr. Todarelli: I did not make any such concession. I said, "I think Mr. Hilly is right."

Mr. Hilly: Let us look at the record and see if I am not right.

The Court: What difference does it make, as to whether or not it is admissible now?

Mr. Hilly: Because, if your Honor please, those are the letters that the witness Sorrentino when she testified in this court spoke about, with respect to this letter that is now being offered in evidence, this photostatic copy of this letter, if your Honor please. And at that time I wanted to have—if your Honor recalls, there was some testimony with respect to these letters. This letter bears the date October 27, 1941. It is the contention of the Government that this letter was never written on October 27, 1941, but was written in February or March, 1942, just prior to the witness Sorrentino going to Amsterdam, New York.

1088

The Court: Is there any date on the letter?

Mr. Hilly: Yes, there is. October 27, 1941.

1689

The Court: Unless you can offer proof, Mr. Todarelli, that this is a photostatic copy of an original, I shall have to exclude it.

Mr. Hilly: Another objection, if your Honor please, that the Government has always maintained with respect to these letters is, these are photostatic copies of the letters, hence it is absolutely impossible for us through any technical means at our command or at anyone's command to check the age of the ink

*A. Krulwich, for Dett., Direct.*

1690

or to check the handwriting on those letters or any thing of that sort, and that is precisely why photostatic copies were used. It is a very clever trick.

Mr. Todarelli: Your Honor, I think that is an entirely uncalled for statement, and I move that the statement be stricken out and the jury be instructed to disregard it.

Mr. Hilly: That statement—

Mr. Todarelli: There is no trick being pulled off on anybody here.

The Court: Well, I will exclude the photostatic copy.

1691

The Witness: Can I ask Mr. Todarelli—

The Court: No.

Mr. Todarelli: No, never mind, Mr. Kay.

By Mr. Todarelli:

Q. I show you this letter dated November 6, 1941 and ask you if you recognize that handwriting? A. That is Joyce's handwriting.

Q. Did you receive it? A. I did.

Mr. Todarelli: I offer this in evidence, and let Mr. Hilly say that this is a trick, too.

1692

In the meantime may I have this marked for identification.

(Marked Defendant's Exhibit NN for identification.)

Mr. Hilly: If your Honor please, with respect to this letter, the Government objects to it on the ground that this letter was not written on the date it bears—November 6, 1941, in accordance with the testimony of the witness Sorrentino, who said that she wrote this letter at this man's behest in February or March of 1942.

The Court: The objection goes to the weight not to the admissibility. It may be received. 1693

I assume that you make no question about this being a photostat—you concede that this is a photostat?

Mr. Hilly: No. This apparently is an original letter.

The Court: Oh, that is the original. Let me see the other one.

(Marked Defendant's Exhibit 'OO in evidence.)

The Court: Do you want to use these in your examination, Mr. Todarelli?

Mr. Todarelli: Yes. 1694

The Court: If you do, take them.

Mr. Todarelli: Just the one that is being admitted in evidence. Your Honor can look at the other one now.

May I read it, your Honor?

The Court: Yes.

(Mr. Todarelli reads Defendant's Exhibit OO to the jury.)

Q. Do you remember receiving this letter? A. I do.

Q. About when did you receive it? A. About November 7th or 8th. 1695

Q. Do you remember that Mrs. Sorrentino testified that this was one of the two letters that you wrote out and which she copied? A. I heard her say something like that.

Q. And did you do this? A. No, sir.

Q. Did you after you received this letter communicate with her? A. I sent her a money order.

Q. And did you hear from her thereafter? A. Yes, I telephoned to her and I sent her a letter.

Mr. Todarelli: I ask for those telephone slips, please.

*A. Krulwich, for Deft., Direct.*

1696

I am informed by Mr. Rubin, your Honor, that the letter that I have offered in evidence, and of which we have only a photostat, was the one which went into evidence before Judge Porterie, and I ask Mr. Hilly to look at page 340 of the testimony before Judge Porterie.

Mr. Hilly: That is not my objection to it, Mr. Todarelli. My objection to it is that this witness testified that the original went into evidence.

1697

Mr. Todarelli: Well, frankly, your Honor, I am confused. I show your Honor the minutes of the trial before Judge Porterie—

The Court: Mr. Todarelli, it does not make any difference to me whether the letter went into evidence before Judge Porterie. This is a photostatic copy, and there has been no proof that it is a photostatic copy of an original.

Mr. Todarelli: But, your Honor, if the photostat had gone in—

The Court: If the photostat had gone in?

1698

Mr. Todarelli: If the photostat had gone in before Judge Porterie it would appear on there. Therefore, the original must have gone in.

The Court: That is a matter of argument, Mr. Todarelli.

Mr. Todarelli: And the witness has testified that it has been lost and the witness has testified that this is a photostat of the original.

The Court: He did not take it, did he?

Mr. Todarelli: Sir?

The Court: Did he take it?

Mr. Todarelli: Who?

A. Kravitch, for Deft., Direct.

The Court: The witness, did he take the photostat 1139  
of the original?

The Witness: Yes, yes.

Mr. Todarelli: Wait a minute.

The Witness: I had it made.

By Mr. Todarelli:

Q. You had it made? A. Yes.

Q. Did you take the original to the photostat man? A.  
Yes.

The Court: Well, I will exclude it.

Q. I show you these telephone slips, marked Exhibits 1700  
10A and up to 10CK, and ask you if you remember that  
these went into evidence and indicate phone calls to Miami,  
Florida, 3 8006, do you remember that? A. I remember  
I made several calls.

Q. Yes. And did you make the calls that are reflected  
here all in the name of Alvin? A. I must have. I believe  
I made almost every one of them.

Q. Now they are all collect calls, Mr. Kay. Why did  
you make them collect? A. Well, no matter where I would  
be at I would walk into a store and if the call amounted to  
\$1.50 or \$1.75, not having the change, I just would put a  
coin in the box, and secondly I would want to be sure that  
Joyce was there. 1701

Q. Well, did you ever repay Miss Hillson for the calls  
that you made?

Mr. Hilly: That is leading, if your Honor please.

A. Surely.

The Court: No, that question is all right.

A. (Continuing) Surely, I paid her.

Q. Now, did you have any talk with Joyce with refer-  
ence to what she says in her letter, Exhibit 00 in evidence.

*A. Krulavitch, for Deft., Direct.*

1702 about going to have a baby? A. Yes, I was under the impression that that was so from which she had told me.

Q. Yes. Did you talk with her about it while you were in New York? A. No.

Q. On the telephone? A. No. You mean when she was in Miami and I was in New York?

Q. Yes. A. Yes, I did talk to her about that.

1703 Q. What was said? A. She was very much enthused about her going to have a baby and I was led to believe that she was going to have a baby, and then it came about that I said to her, "We better get married," and after I spoke that way to her I remember that she said—I believe it was a couple of weeks after that, at that time she said, "All right," and I told her, "As soon as I come down then we would make that arrangement."

It wasn't two days after that that she said that she had a miscarriage.

Q. I don't know whether I covered this, but you said that you sent her a money order? A. Yes.

Q. And I show you Defendant's Exhibit X-2 and ask you if that is the money order that you sent to her? A. Yes.

1704 Q. For \$60? A. Yes.

Q. And did you thereafter send her any more money? A. I sent her an additional \$50 a few days prior or subsequent, and then an additional \$25 as a gift.

Q. I show you this Government's Exhibit W-2, and I ask you if that is the \$25 which you sent on November 11th? A. Yes.

Q. Now, when did you go down to Florida again, if you did go down? A. I went down I believe around the 20th or 22nd of November.



Q. By the way, you heard testimony here about the El Chico being raided on November 11th. Before you went down to Florida on November 21st did you know anything about that raid? A. No, sir. 1705

Q. When did you find out about it? A. The first time I knew of it was when one of the agents told me about it, Mr. Rumans.

Q. Well, was that after— A. That was in New York on December 6th.

Q. Now, you went down you say on the 21st? A. Yes.

Q. Where did you go? A. To the El Chico Hotel.

Q. And how long did you remain there? A. I must have remained about six days I guess. 1706

Q. Did you stay there at the El Chico the entire time? A. I did.

Q. And did any prostitution take place while you were there? A. No, sir.

Q. Was Joyce there? A. Yes, sir.

Q. Was Betty there? A. Yes, sir.

Q. What did you do during the time that you were there? A. I took—we went—the first thing I did was I took Joyce over to a department store and I bought her some clothes. I bought her some slacks, sport clothes, and then in the evenings we went to different night clubs and different places of amusement. 1707

Q. Did you hire a car while you were there? A. I did.

Q. For how many days? A. I believe it was six days. Let me see. I may have hired it for a week or six days, I am not sure.

Q. That is the car that is referred to in the exhibit introduced by Mr. Barbash? A. That is correct.

*A. Krolenitch, for Deft., Direct.*

1708

Q. Did you look for any place of residence? A. I also went to several real estate people about a home, buying a home, and also buying a lot for our advertising business which would take the space of at least a thousand, and went to Mr. Wambaugh, Dr. Wambaugh, at that time, and this doctor treated Joyce, and we spent all afternoon with this doctor. He treated Joyce and after<sup>a</sup> he got through treating—while he was treating Joyce I believe it was his brother or himself, I am not sure which, we discussed about a lot which was opposite the Gulf Stream Race Track, I believe it was, and I gave him all the information what I wanted, and I left him, and he said he would let me hear from him, and he did the next couple of days.

1709

Q. Did there come a time, Mr. Kay when you had a fight with Joyce down there? A. There did.

Q. Was this inquiry from Mr. Wambaugh before that fight or after the fight? A. Before.

Q. I show you this letter and envelope dated November 28, 1941 and ask you if you received that? A. I did.

Q. And when and where did you receive it? A. I will have to go by the postmark.

1710

Q. Well, approximately when and where? A. I received this—it was sent November-29th, and I probably received it on the 30th, because I notice airmail.

Q. Where? A. At 325 East 77th Street.

Q. In New York? A. In New York.

Q. And this was after you had left Florida? A. That is right.

(Mr. Todarelli hands letter to Mr. Hilly.)

Mr. Hilly: I object to this letter, if your Honor pleases.

The Court: What is the objection?

*A. Krulwich, for Deft., Direct.*

Mr. Hilly: First off—

1711

The Court: Let me see it, please.

Mr. Hilly: Yes, your Honor (handing to Court).

The Court: What is your objection?

Mr. Hilly: If your Honor pleases, you will notice that part of it is typewritten and part is in handwriting.

The Court: It may be received in connection with the testimony of the witness.

(Marked Defendant's Exhibit PP.)

(Mr. Todarelli reads Defendant's Exhibit PP. to the jury.)

1712

Q. Now, did there come a time, Mr. Kay, when you did have a fight with Joyce? A. Yes.

Q. Now, tell us the circumstances of that, please. A. The telephone rang three or four times and each time Joyce said, "I think you have the wrong number," and hung it up. After the fourth time I said to her, "The next time it rings I am going to answer it," and I did. And when I answered it no one was on the other end of the receiver. And then I hung up the telephone and I said, "Joyce, is that call from somebody for you? If it is, you might as well tell me." She said, "No." She said, "I don't know who it is."

1713

A few minutes after that the phone rang again and she answered the phone, and I stood right alongside of her and I said, "Whoever it is, if it is somebody, a friend of yours or something, tell them that you are my wife and I don't want you fooling around with them, they should stop calling you. In front of me do that." I believe she done that. And then she told me there was nothing wrong with what she was doing, that she was lonesome and she was

*A. Krul with, for Dr. H., Direct.*

1714

going out with a man who owned a restaurant about a block or two away from the hotel, and he was a very decent fellow, and in the evenings, having nothing to do, she would take a ride with him in his car and pass the time without anything being wrong. Well, I told her that I thought that was wrong for her to do to me. And after a while, I believe it was a couple of hours after that, the matter dropped for a while, while looking in her drawer I found this note.

Q. Are you talking about Government's Exhibit C? A. This note to Harold.

1715

Q. Note to Harold (handing). A. This is Defendant's Exhibit, isn't it?

Q. Oh, Defendant's Exhibit C. A. I found this note in the drawer. I took this note out and I put it in my pocket. I was then convinced for the first time that there was something wrong.

Q. Did you find anything else with this note? A. Yes. I found some other little, some pictures, the pictures of the boat trip.

Q. And are they the three snapshots that have been marked Exhibit A? A. That is right.

1716

Q. The two girls and two boys in one of them? The girls and two young men? A. That is right.

Q. Sailors? A. That is right.

Q. Did you find anything else? A. I don't know. I found a few papers which I don't remember. But I remember that evening I called her attention and I said to her, "Who is this Harold?" She told me that, what was her girl friend Pauline doing, telling a story on her? As to say, what is she doing, telling you everything I do? And she started to spring at Pauline to beat her up. I got

*A. K. Alewitch, for Deft., Direct.*

the middle to break them apart, trying to convince her that this information was not obtained from Pauline without showing her that note. But it didn't do no good. She kept yelling and fighting and hollering, and it was such noise there that the police came, and when the police came they stopped the argument. The following—that night there was no trains out of Miami or I would have left, but the following morning I left and I told her she and I were through. 1717

Q. Now, at that time did you know anything about the boys in this photograph? A. No, I didn't, until I found the photograph. That caused more suspicion. 1718

Q. But did you know any of the details of this trip? A. No.

Q. At that time? A. No.

Q. Now, when did you leave? A. I left the following morning after the fight.

Q. Did you talk with her again? A. I did.

Q. Yes? A. And she admitted then, later, that she had an affair with these sailors on the boat and she also admitted that she had affairs with this Harold.

Q. Now, when was that told to you by her? A. The first time it was told to me was I believe in December. The time that Mr. Rumans told me about the arrest was in December 6th. And when I questioned her on that she admitted it. She said she had done nothing wrong but she admitted the arrest. 1719

Q. But that was after December 6th? A. After December 6th.

Q. But up to December 6th you did not know anything about it? A. Nothing at all.

*D. A. Krulavitch, for Deft., Direct.*

1720

Q. I am talking now about the period immediately after you left Florida and returned to New York. Did you talk with her on the telephone? A. Yes.

Q. When? Approximately when? A. Oh, it must have been a couple of days later.

Q. And what was said? A. Well, it was a conversation about trying to straighten out this argument.

Q. Did you call her or did she call you? A. I think I received a letter, I am pretty sure I received a letter or a telegram and I called her.

1721

Q. What did she say and what did you say? A. I really do not remember the entire conversation.

Q. All right. At any rate, did she return to New York thereafter? A. She returned to New York on December 4th.

Q. Did you see her? A. I did.

Q. Where did you see her? A. I saw her at Second Avenue and 80th Street I believe somewhere, or 79th, and then I saw her at the house. We went over to the house.

1722

Q. What did you say and what did she say? A. Well, she tried to tell me that all this was nothing wrong, at that time that was before the arrest, she tried to tell me there was nothing wrong in her little escapades with this fellow she mentioned by the name of Herbert also, and Harold that it was just merely passing fancy and killing time, and tried to get me to ease up. And I said to her that if she showed me that she was telling the truth by going home and being with her mother and so on, could prove to me that these were not so, all these incidents, why, I would go back with her, otherwise I would not.

Q. How long did she remain at your apartment? A. Oh, a couple of hours. That same night she left back for Canandaigua.



*A. Krulewitch, for Deft., Direct.*

Q. Now, at that time were you through with her? A. 1723  
Oh, yes.

Q. Now, you were arrested on December 6th? A. That  
is right.

Q. About what time in the morning? A. It was about  
6:30 in the morning of December 6, 1941.

Q. Who arrested you? A. Mr. Rumans, Mr. Hoag-  
lund, and a few other agents.

Q. At your home? A. At my home.

Q. Who was with you at the time? A. Miss Baker at  
the time, who is now my wife.

Q. That was at 6:30 in the morning? A. That is 1724  
correct.

Q. Where were you taken? A. The Federal Bureau  
of Investigation office, in this building.

Q. How long did you remain there? A. I remained  
there until about 9:30 or 10 o'clock at night.

Q. December 6th? A. That is correct.

Q. Then where did they take you? A. They took me  
over to West Street Prison.

Q. How long did you remain there? A. Until—that  
was Saturday night. Until Monday morning.

Q. Were you arraigned before a commissioner Satur- 1725  
day and Sunday? A. No.

Q. When were you arraigned? A. Monday afternoon.

Q. In other words, you got out Monday afternoon, De-  
cember 8th? A. That is correct.

Q. Did you communicate with Joyce during the time  
that you were in jail? A. I couldn't.

Q. Well, did you? A. No.

Q. Did you send any telegrams or anything? A. No.

Q. After you were released on December 8th did you  
communicate with Joyce? A. No.

*A. Krulutch, for Det., Direct.*

1726 Q. Either by telephone or by letter or telegram?  
No.

Q. You did not? A. No.

Q. When did you next see her? A. The next time I saw her was in December, about two days before Christmas or a day before, either two days or a day before.

Q. Now, I think you told us a little while ago, Mr. Krulutch, that on December 6th Mr. Rumans told you about the raid of November 11th in Miami, Florida, at El Centro? That is right.

1727 Q. Tell us what was said about that. A. He asked me if I was familiar with what was going on in Florida and I said no. And then he asked me did I know that the place was raided on December sometime, or November, I don't remember just when, and I told him no, that would not be possible. I said I was there after that, I would have known. He then said, in other words he says, "You didn't know anything about this?" I said I definitely did not and I still don't believe it. I said, "I can't understand how a thing like that could have happened and me being there for pretty near a week after and not hearing of it or knowing of it and having police come there and not mentioning it." And then he said, "Well," he says, "it is true, though. You will find that out."

1728 Q. Did you believe him? A. No.

Q. Now, when did you next talk with Joyce? A. That was in December, towards Christmas, either a day or two before.

Q. Did you talk with Betty before you talked with Joyce? A. I did.

Q. When was that? A. That must have been about December, the middle of December.

*A. Krulwich, for Deft., Direct.*

Q. What did you say to her? A. I questioned her as to all of these incidents and she admitted them to be true. 1729

Q. Well, all of them. Did you question her about the raid of November 11th? A. Yes.

Q. She admitted that was true? A. She admitted that was true.

Q. Did you question her about the snapshots? A. That is right.

Q. What did she say? A. She admitted that they had an affair on the boat with these sailors.

Q. Where? A. Coming from Virginia Beach.

Q. That is the trip that you sent Joyce on? A. That is right. And she admitted that that note, that Harold was the fellow that had the delicatessen and that she was sleeping with him. 1730

Q. Who is "she"? A. Joyce.

Q. When you saw Joyce did you talk with her about these things? A. No. No. I spoke to Joyce in general because I only had a short time with her, probably a couple of hours; because when she came back she was very anxious to go up to Canandaigua to her mother's; and I might have mentioned something in the conversation, but I felt after Christmas when she would come back to New York, if she were to come back, that I would get an explanation as to everything. 1731

Q. Now, in the meantime, going back for just a moment to December 8th, you were wanted in Florida, were you not? A. I was told that, yes.

Q. Did you waive extradition? A. I did.

Q. For appearance in Florida? A. I did.

Q. You put up bail to go there? A. I did.

Q. Did you go to Florida? A. I went there.

*A. Krulewitch, for Deft., Direct*

1732

Q. Now, did you know thereafter that Joyce was arrested? A. She and I—

Q. Did you find out thereafter that Joyce had also been arrested? A. Yes.

Q. Did you find out that Better had also been arrested? A. Yes.

Q. And were all three of you to go down to Florida? A. Yes.

Q. Now, did you go down to Florida thereafter? A. I did.

1733

Q. What did you do down there? A. I went down there, went to the—I think first I went to retain an attorney to find out what that was all about. And I retained—

Q. Now, just what did you do? You retained an attorney. A. I retained the attorney.

Q. What else did you do down there? A. I then went to the District Attorney's office.

Q. Did you talk to him? A. I spoke to the District Attorney.

Q. Then what happened?

Mr. Hilly: Objected to, whatever happened down there, if your Honor please.

1734

Mr. Todarelli: I want to know what he did your Honor.

The Court: You can show what he did.

Mr. Todarelli: Yes.

Q. What did you do thereafter?

The Court: We are not concerned with anything about that case down there.

A. The District Attorney dismissed the case.

The Court: That may be stricken. The jury—

*A. Krulench, for Bell, Direct.*

Instructed to disregard that remark. We are trying 1735.  
this case here, not any case in Florida.

The Witness: I am sorry.

Mr. Todarelli: May I be heard on that, your  
Honor?

The Court: No. Go ahead with your examina-  
tion.

Q. At any rate did you talk with Joyce before you hired  
an attorney down there? A. No.

Q. Did you talk with Joyce after you hired an attor-  
ney? A. Yes.

Q. Where? A. I spoke with Joyce in New York on 1736  
December—about the 23rd.

Q. Did there come a time when you were not required  
to be in Florida any more? A. Yes.

Q. All right. Now, what happened after that? A. In  
about February it came about that I was not required to  
be in Florida any more, the latter part of February, and  
after that I said to Joyce, "Joyce, the District Attorney of  
Florida had said to me that it is better that I keep away  
from you and you probably away from me." I said, "You  
may be a little financially embarrassed," I said, "and here  
is \$150, and I hope and wish you all the luck in the world. 1737  
and this is the end between us." And I gave her that  
money, and we parted.

Q. Did you see her after that? A. Yes.

Q. When did you next see her? A. I next saw her I  
believe it was in the summertime of 1942, around July.

Q. What happened? A. She came up to me with four  
men and they demanded a thousand dollars from me un-  
der threat that they would beat me up and cut me up. I  
told them I didn't have a thousand dollars, and I told them

*A. Krulwich, for Deft., Direct.*

1738 that I don't know why they are making that demand. And it seems that there was words back and forth, they are very clear, but I do remember they did not get it.

Q. What did you do thereupon? A. I then left the went to the police station, made a report, and I told the detectives what happened. They immediately, from what understand, set out to find them and did not find them.

Q. What police station did you go to? A. 104<sup>th</sup> Street.

Q. When they asked you for a thousand dollars, what did Joyce say? A. Well, she threatened me, and she started to hit me; and she took her shoe off and broke the windows of the car and she said if I did not give her a thousand dollars she will get even with me, she will make it cost me at least ten times that much, and all kinds of threats, and she said that she could always change her story. And I kept saying to her, "Well, it is up to you." Because these four men were there with her.

Q. Did the four men say anything? A. Oh, yes.

Q. What did they say? A. They said that they wanted that money.

Q. Did they make any threats? A. Oh, yes. They threatened me. They were going to beat me up, and didn't a lot of things would happen to me.

Q. But you did not give it to her? A. I did not.

Q. When you went to the police station did you talk with any detective there? A. Yes, sir.

Q. And with whom? A. Detective Terminello and Detective Slattery.

Q. And Detective Slattery is the one who was here yesterday? A. That is right.

Q. Now, do you remember some testimony about Joyce living with Mrs. Jensen? A. I do.



*A. Krilowitch, for Dett., Direct.*

Q. Tell us about that. A. When Joyce came back to New York in January from Canandaigua she took an apartment of a room with a Mrs. Jensen at—I believe it was 80th Street and First Avenue, somewhere around there, and when I had the different discussions with her about the case, about preparing it and so forth, she told me that she was living there and she also told me that she was going to get a job, that she was going to work.

Q. Now, there came a time when you were arrested again, is that right? A. In May of 1943.

Q. Before that? Were you arrested before that? Were you arrested in December of 1943? A. No, that was May.

Q. Of 1942? A. December. That was on December 6th of 1942. That was the second arrest.

Q. The May, 1943, you are talking about, is the intimidation charge? A. That is right.

Q. But weren't you arrested before that on this case here? A. That was on December 6th—no, that was on December 23rd, that is correct.

Q. All right. A. December 23, 1942, I was arrested in this case.

Q. By whom? A. Mr. Hoagland, Mr. Rumans and several more.

Q. And that was on the charge that you are being tried on here now? A. That is correct.

Q. And did you see Joyce thereafter? A. No, after that I didn't see Joyce.

Q. Well, were you arrested again? A. Yes, in May I was arrested again.

Q. What was that charge? A. I never found out what that charge was. I was supposed to have intimidated her.

*A. Krulwich, for Deft. Direct.*

1744. Q. Well, were you arraigned? A. Yes.

Q. Before whom? A. Commissioner Cotten down stairs.

Q. Were you apprised at the time of what the charge was? A. No, they refused to give that information.

Q. Who arraigned you from the U. S. Attorney's office? A. Mr. Hoaglund and the District Attorney.

Q. Didn't the District Attorney tell the Commissioner what the charge was? A. No, he just gave him the affidavit or complaint. It was just on that complaint.

Q. And were you held on bail? A. Yes, \$5000 bail.

1745. Q. Is that case still pending today? A. That is right.

Q. It has never been dismissed? A. No.

Q. And were the charges of intimidation preferred against you true?

Mr. Hilly: Objected to, if your Honor please.

The Court: He may answer that.

A. No.

Q. Did you ever intimidate or seek to intimidate any Government witness? A. No.

Q. You were tried in this court in July of 1943, is that right? A. Yes.

1746. Q. And after the trial was your bail raised? A. Yes.

Mr. Hilly: I did not hear that last.

Mr. Todarelli: After the trial—

Mr. Hilly: No, the question before that.

Mr. Todarelli: You were tried in July, 1943, in this court?

The Witness: Yes.

Q. And what was said at the time that your bail was raised? A. The District Attorney—

Mr. Hilly: Objected to, if your Honor please.

A. *Kradavitch, for Dettl, Direct.*

The Court: Is this material, Mr. Todarelli?

1747

Mr. Todarelli: This is material, because it grows out of the intimidation charge.

The Court: All right. Go ahead.

A. (Continuing) The judge was told that in view of the fact that I intimidated this girl in May—some time in May, that I was a vicious and vile character and I would be apt to harm a Government witness, something similar to that, and he asked that my bail be raised tenfold.

Q. And it was raised from? A. \$3000 to \$30,000.

Q. Was it raised from \$15,000 to 30,000? A. No, from 3,000 to \$30,000.

1748

Q. All right. Then there was a second trial in August of 1943 in this court? A. Yes, sir.

Q. And at that trial did the witness Joyce admit that the intimidation charge was a false one? A. She did.

Q. Were you arrested thereafter? A. Yes.

Q. And about when was that? A. That was about I believe in November she again had me arrested.

Q. And what was the charge? A. She charged that I saw her—no, I threatened to do her bodily harm as I had done it before, something similar to that. The complaint is there.

1749

Q. And was there a trial? A. There was.

Q. Where? A. In the Magistrate's Court.

Q. Before whom? A. I believe Judge Samuel Orr.

Q. And what happened? A. What do you mean? What happened to the case?

Q. What was the disposition of the case? A. Acquitted.

Q. Did Joyce testify in that case? A. She did.

*A. Krulowitch, for Betty, Direct.*

- 1750 Q. Then there was a trial before Judge Moscovitz?  
Yes.  
Q. A year ago last February? A. Yes.  
Q. And this is the fourth time you have been on the  
A. Yes.

Q. Now, Mr. Kay—

Mr. Hilly: If your Honor pleases, I would like to approach the bench at this time.

Mr. Todarelli: It is all in the record, your Honor, every one of them is in the record.

- 1751 Mr. Hilly: Yes, I know they are in the record. Mr. Todarelli, but I would still like to approach the bench on it.

(Discussion at the bench off the record without the hearing of the jury.)

Mr. Todarelli: Would it be out of order, your Honor, for me to confer with my client for a moment?

The Court: No, you may confer with him.

Mr. Hilly: Maybe this time would be appropriate to kill two birds with the one stone to take both the recess and have the consultation.

- 1752 The Court: Would you like to confer with him?

Mr. Todarelli: Just a few minutes, that is all.

The Court: All right. We will take our morning recess now.

Mr. Todarelli: All right.

(Short recess.)

Q. Mr. Kay, I want to pick up one loose end. When you talked with Betty and asked her whether or not the place down at Miami was raided on November 11th, did you

*A. Krulewitch, for Detl. Cross.*

have any talk with her at that time about Washington? A. 1753  
I did.

Q. What was said about that? A. She told me that she and Joyce had stopped off in Washington and spent the night in Washington on her way down.

Q. Around October 21st? A. Yes.

Q. And then that they had taken a train at Washington? A. That is right.

Q. Mr. Kay, did you ever unlawfully, wilfully and knowingly, persuade, induce and entice or cause to be persuaded, induced and enticed, Elizabeth Mary Johnston to go to Miami for the purpose of prostitution, debauchery and other immoral purposes? A. No, sir. 1754

Q. Did you conspire at any time with Rose Sookerman or with anybody else to do that? A. No, sir.

Q. Did you ever receive any money from Rose Sookerman or from Elizabeth Mary Johnston? A. No, sir.

Q. Did you ever receive any money from anybody as proceeds from any prostitution? A. No, sir.

Q. That you had anything to do with? A. No, sir.

Q. Did you know at any time that either Betty or Joyce was engaging in prostitution? A. No, sir.

Mr. Todarelli: Your witness, Mr. Hilly. 1755

**CROSS EXAMINATION by Mr. Hilly:**

Q. When for the first time did you know about why Joyce was in Westfield State Farms? A. The time that I was up to Westfield State Farms.

Q. Yes. When was the first time that you knew the reason for her being there? A. When I was in Westfield State Farms.

Q. Who told you at that time? A. She did.

*A. Krulewitch, for Deft., Cross.*

1756

Q. What did she tell you? A. She told me that she was sent there for looking suspicious and that she had run away from home and was up in Buffalo, that she had done no wrong, and she was sent to Westfield State Farms.

Q. She had done no wrong whatsoever? A. That is correct.

Q. Did she ever tell you or did you ever know the section that she had violated of the Criminal Code? A. No. Yes, I found that out later.

1757

Q. When did you find that out? A. It was after she had told me that she was a wayward minor and the time that I had the attorney draw up the writ.

Q. You say you found it out. How did you find it out? A. Through the attorney.

Q. The attorney told you? A. Yes.

Q. Did the attorney make an investigation in Buffalo? A. No.

Q. He did not make any investigation in Buffalo? A. No.

Q. Do you know where the attorney made the investigation? A. No.

Q. He just told you; is that right? A. That is right.

1758

Q. What did he tell you; it was Section 913(a)? A. In making up the writ I think it was under 913(a).

Q. When you submitted your affidavit in support of the writ; is that correct? A. That is correct.

Q. And you say you visited her at the institution; is that right? A. That is right.

Q. And when did you visit her at the institution? A. I don't know. It must have been a couple of months after.

Q. That was when you had the visit with Miss Murphy, she was present at that? A. Yes.



*A. Krulewitch, for Deft., Cross.*

Mr. Hilly (to the clerk): Have you got the Westfield State Farms file? 1759

The Clerk: Yes.

Q. Was there anyone else present? A. Miss Murphy, Joyce and myself.

Q. And when did the visit take place? Do you recall?

A. Maybe December or January; I don't know.

Q. If I tell you the date was December 17, 1939, would that refresh your recollection? A. If it is—yes, it may be. It was December or January.

Q. You said that you learned that she was in Westfield through an attorney; is that correct? A. That is right. 1760

Q. And what was that attorney's name? A. The attorney who told me that?

Q. Yes. A. I don't remember.

Q. Wasn't the attorney's name Nathaniel Feinstein? A. No, sir.

Q. It wasn't Nathaniel Feinstein? A. No.

Q. Are you sure of that? A. Positive of that.

Q. Can you recall that attorney's name that told you she was in Westfield State Farms? A. I can't remember. That was in 1939 I made an inquiry, but I can't remember who. 1761

Q. You can't remember who. Well, do you remember where this attorney told you that she was in Westfield State Farms? A. I think it was on 174th Street.

Q. Did you just meet him on the street? A. Oh, no. No. It was somebody I must have known.

Q. Well, how did you happen to meet him on 174th Street? A. That is where I was living at the time.

Q. Did he come to your house? A. I don't remember

*A. Krulewitch, for Deft., Cross.*

1762 the exact thing. I think I happened to meet him, made an inquiry.

Q. Did you have any particular reason for asking that lawyer as to where she was? A. Yes, sure; to find out.

Q. Yes. But what made you select this particular lawyer? A. Any lawyer. It wouldn't have made any difference.

Q. Then you asked this lawyer, and at that time he says she is in Westfield State Farms? A. That is correct.

Q. How long did your conversation last with this lawyer? A. I would not remember that. I don't think very long.

Q. Did that lawyer live in the neighborhood up there? A. I couldn't tell you that. I just cannot remember that incident.

Q. But in any event you did learn— A. That she was in Westfield State Farms.

Q. From this attorney? A. Yes, sir.

Q. And thereafter, on December 17th, you visited her. Is that correct? A. That is correct.

Q. And you had a conversation with her in the presence of Miss Murphy, is that right? A. Yes.

Q. And at that time did you tell Joyce that you had hired some lawyers in Westchester County to secure her release? A. I did not.

Q. You did not? A. No.

Q. Didn't you tell her at that time that you did in fact hire lawyers to help her? A. I did not.

Q. Didn't you tell her you would have her released in 48 hours? A. I did not.

*A. Krulewitch, for Dea., Cross.*

Q. You did not tell her that. And did you ask Joyce if she had committed prostitution with an employee of the institution, that is, Westfield State Farms? A. No.

1759

Q. You are certain of that. And didn't you attempt to coach her as to the story she should tell the attorney of her treatment at Westfield State Farms? A. I don't understand that.

Q. Didn't you suggest that she make certain answers to the attorney? A. I didn't see her.

Q. You talked with Joyce at the institution? A. You mean at the time that I spoke to her?

Q. Yes. A. Of course not.

-1760

Q. And didn't you tell her that she should advise the attorney of the poor management of her parole? A. I did not. To the best of my memory I never mentioned anything like that.

Q. And didn't you tell her it was very important that she remember these things and that "I want you to tell them to the lawyer"? A. I don't remember that.

Q. Would you say you made that statement or you didn't make that statement? A. The chances are I didn't.

Q. Let's see if we can't be a bit more definite on that. Did you make those statements or didn't you make those statements? A. I can't remember making them.

1761

Q. Can we say that you did make them?

Mr. Todarelli: Oh, I object, your Honor.

He said he can't remember.

The Court: He may answer.

The Witness: What was that question?

Q. Can you tell us whether you made those statements?

A. I couldn't say whether I did or didn't.

*A. Krulewitch, for Deft., Cross.*

1768 Q. Didn't you tell her that she would be out for Christmas, at that time? A. I don't remember that conversation at all.

Q. Didn't you mention something about a coffee shop, saying that your sister had gotten it? A. I don't remember that.

Q. Well, did you make that statement? A. No.

Q. Didn't Joyce tell you that she would not leave the institution to take a job as a domestic? A. I did not speak to Joyce. She could not have told me anything.

1769 Q. You had an interview with Joyce in the presence of Miss Murphy, didn't you? A. At that time?

Q. Yes. A. Yes. But that never was spoken of.

Q. That is what I am asking specifically, if that was ever spoken of. A. No, I don't think it was.

Q. Let us be a bit more definite than "I don't think." Would you say yes or no as to whether or not you had that — A. You want a definite answer?

Q. Yes. A. To the best of my memory I can't remember that.

Q. And that is all you can say? A. That is all I can say on that.

1770 Q. Did you ask Joyce at that time if she would go to a very fine home that you could provide for her? A. That I might have said.

Q. Well, can you be a bit more definite? A. Because in trying to obtain her release I might have said that I would get her a position.

Q. Did you know what work she was performing in the — now, wait a minute; you said, to get a position for her? A. That is right.

Q. Or did you tell her that you would provide a fine home for her? A. A position for her.

*A. Krulwich, for Deft., Cross.*

Q. That is what you said? You didn't say that you would provide a fine home? A. A position in a fine home. 1771

Q. In a fine home that you would provide? A. No. That definitely not.

Q. Did you know what work she was performing in the institution at that time? A. I did not.

Q. Didn't you know that she was in that laundry? A. I did not.

Q. And did you criticize the placing of her in the laundry at that time? A. No.

Q. Didn't you say at that time that you criticized the placing of her in the laundry by saying "And this is rehabilitation"? A. I don't remember that. 1772

Q. Well, did you make the statement? A. I don't believe I did.

Q. And then didn't you suddenly turn to Miss Murphy and say, "I don't mean the people in the institution; I mean the State in general"? A. I can't remember that.

Q. And then seeing that Miss Murphy was taking some notes, didn't you say to Miss Murphy, "When I see you again, and I will see you again, I'll bring a stenographer if I am permitted"? A. I don't remember Miss Murphy taking notes. 1773

Q. You don't remember Miss Murphy taking notes? A. That is correct.

Q. And consequently you then didn't tell Miss Murphy that you would bring a stenographer the next time? A. I don't think I did.

Q. And didn't you flourish or hold up to Miss Murphy and show her a document saying that on her last arrest Elizabeth was found not guilty? A. I don't remember a thing of all that.



*A. Krulewitch, for Deft., Cross.*

1774 Q. Well, would you say you didn't show that document? A. I am sure I didn't.

Q. And don't you recall that you held that document up in such a manner and in such a fashion that Miss Murphy was able to observe the docket number, which was 3443? A. Definitely not.

Q. Definitely not? A. No.

1775 Q. Well, let me show you Government's Exhibit 26 in evidence and—I am in error in that. Let me direct your attention to Government's Exhibit 28 in evidence and direct your attention to the docket number 3443 which appears on that exhibit. Don't you remember flourishing a copy of that exhibit to Miss Murphy at that time? A. I never had a copy of this at that time.

Q. You never had a copy? A. No, sir.

Q. And you never showed that to Miss Murphy? A. No, sir.

Q. You know that this exhibit indicates that the witness Sorrentino, or the witness Joyce Winters as she was known at that time, was found not guilty on that particular charge, is that right? A. I found that out only recently.

1776 Q. In this court for the first time? A. No, before this court time. Mr. Todarelli has the date.

Q. Some time in advance of this trial you found that out? A. That was the first time.

Q. But you didn't know it at that time? A. That is correct.

Mr. Hilly: If your Honor please, at this time I would just like to have this paper marked for identification, please.

The Court: You may.

(Marked Government's Exhibit 30 for identification.)



*A. Krulewitch, for Deft., Cross.*

Q. Now, there was a trial of this case in July of 1943, 1777  
is that correct? A. Yes.

Q. And you testified as a witness in your own behalf  
at that time, is that correct? A. I did.

Q. And there was a trial of the case in August of 1943,  
is that correct? A. Yes.

Q. That was a so-called second trial, is that right? A.  
Yes.

Q. And you did not testify as a witness in your own  
behalf at that time, did you? A. That is correct.

Q. Although you heard the testimony at that time. I  
am talking now with respect to the second trial, you heard 1778  
the testimony?

Mr. Todarelli: Well, I object to this, your Honor,  
on the ground that the defendant had a perfect right  
not to testify at the second trial.

The Court: That may be so, Mr. Todarelli, but  
he has committed himself for examination now and  
counsel is entitled to inquire on it.

Mr. Todarelli: I don't mind his answering pro-  
vided your Honor will tell the jury that he had a  
perfect right not to testify.

The Court: Well, of course, that is true, he had a 1779  
right not to testify if he did not want to.

Q. You heard the testimony at the second trial, is that  
right? A. I did.

Q. And you did not testify at that trial? A. That is  
right.

Q. And what are your reasons for not testifying, sir?

Mr. Todarelli: I object to that, your Honor.

The Court: He may answer. There are several  
cases on that point, Mr. Todarelli, Supreme Court  
cases.

*A. Krulewitch, for Deft., Cross:*

1780

A. The reason I didn't testify was because there was a lot of inflammatory and perjured evidence, and the District Attorney refused to give us papers, and the Circuit Court reversed that case on that reason and ground.

Q. What do you mean that the Circuit Court reversed that case on that reason? A. We took exception to a lot of perjured testimony and you refused to give us the statements—when I say “you” I mean the Government office, and you put in inflammatory testimony which is not in this case.

1781

Q. You say the Circuit Court reversed that case, is that right? A. That is correct, for the reasons I enumerated.

Q. No, in the first case the witness Johnston testified against you, is that correct? A. That is correct.

Q. And she also testified against you in the second trial, is that correct? A. That is correct.

Q. Now, the witness Levenson testified against you in the first trial and in the second trial, is that correct? A. That is correct.

Q. And the witness Dolan testified against you in both trials, is that correct? A. That is correct, I believe so.

1782

Q. And the witness Peacock testified against you in both trials, is that right? A. That is correct.

Q. And the witness Neville testified against you in both trials? A. That's—no Neville? I don't know who Neville was.

Q. Yes, Neville did testify. A. I don't think he testified in the second trial; in the first trial instead of Miss Blumberg.

Mr. Todarelli: He did not testify in the second trial.

Mr. Hilly: Pardon?

*A. Krulewitch, for Deft., Cross.*

Mr. Todarelli: He did not testify in the second trial. 1783

Q. He testified against you in the first trial? A. That is right.

Q. Now, the witness Mrs. Blumberg did not testify in the first trial, is that correct? A. No, she didn't.

Q. She testified in the second trial? A. That is correct.

Q. And the witnesses from the Pennsylvania Railroad, that is, Miss Sullivan— A. All of them we will concede.

Q. —they did not testify against you in the first trial, did they? A. Some of them did.

Q. They testified in rebuttal. A. You asked me— 1784

Q. In the first trial. A. —if they did testify in the trial and some of them did.

Q. Did Miss Sullivan testify in the first trial in rebuttal?

A. I don't know. I don't remember that.

Q. And when you heard that testimony in the second trial you didn't take the witness stand and contradict it, did you, sir? A. I did not.

Q. Now, you testified here in this trial, sir, that you were born in Baltimore, is that correct? A. Yes.

Q. There is no doubt in your mind about that? A. Yes.

1785

Mr. Todarelli: Well, I don't think the witness can know that himself. I don't remember when I was born. Somebody told me.

The Court: Mr. Todarelli, didn't you ask him in your direct examination where he was born?

Mr. Todarelli: Certainly, but I mean he says "Are you sure of that?"

The Court: Then hasn't counsel on cross examination a right to inquire on that same subject?

*A. Krulewitch, for Deft., Cross.*

1786

Mr. Todarelli: Certainly, your Honor.

The Court: Very well.

Mr. Todarelli: I say that we don't know.

The Court: You can argue that before the jury.

Q. You were born in Baltimore, is that right, sir? A. As far as I know.

Q. Well, you so stated at this trial, is that correct? A. Yes, yes, I can say I was born in Baltimore.

Q. Pardon me? A. I can say I was born in Baltimore.

1787

Q. Now, at the first trial you said you were born in New York, is that correct? A. I might have said New York.

Q. I see. Well, then, you were in error when you said that in the first trial? A. Well, from what I understand my mother went to Baltimore to her mother while I was born, and then came right back.

Q. So because of that transfer from New York to Baltimore at the first trial you said New York and then yesterday you said Baltimore, is that correct? A. I believe so.

1788

Q. Now, yesterday you told us that you worked for some Customs brokers, is that correct, sir? A. Yes.

Q. And after the work in the Customs brokers, or when you stopped working for Customs brokers you said you went into the real estate business, is that correct? A. That's right.

Q. Now, you didn't tell us that at the time of your second trial, is that correct? A. Well, I could explain that.

Q. I ask you first if that is correct; I didn't ask you to explain that. A. No, I didn't say that.

Q. You didn't tell us anything about the real estate business— A. No, I did not.

A. Krulewitch, for ~~Def.~~ Cross.

Q. —the first time you testified? A. That is right.

1789

Mr. Todarelli: You mean the second trial, Mr.

Hilly, he didn't testify?

Q. No, the first trial, is that correct? A. No.

Q. Is that correct? A. Yes.

Q. Now with respecting to this advertising business, you say there was a concern known as the Associated Advertising Company? A. That is right.

Q. And that was your concern, is that right? A. No.

Q. That was not your concern? A. No.

Q. And that address was 1465 Broadway? A. That is right.

1790

Q. And where else have you had an address for the Associated Advertising Company? A. Philadelphia, Atlantic City, Miami, Florida.

Q. What was the address at Miami, Florida? A. It was on 24th Street.

Q. What address? A. Three I think something hundred Northwest 24th Street.

Q. And who ran that office in Miami? A. A fellow by the name of Frank.

Q. Frank what? A. Joe Frank.

Q. Joe Frank? A. Yes.

1791

Q. And does the Associated Advertising Company function today? A. No, not that I know of, unless my brother has the office:

Q. But you are not connected with it? A. No, sir.

Q. And when did you cease your connection with it?

A. About the beginning of '42, around that time.

Q. Now, you were not connected with the other branches of the business, were you? A. Al Kay Advertising Company?



*A. Krulewitch, for Deft., Cross.*

1792 Q. Yes. A. I was connected with all of them.

Q. I see. And did you cease your connection with them all at the same time? A. No.

Q. Well, you left the Associated Advertising in '42, is that correct, sir? A. I believe, yes, around the early part probably.

Q. The early part of '42. Well, had you ceased your connection with the other businesses at or about that time? A. No.

Q. When did you sever your relations with these other businesses? A. Well, I couldn't say the exact time. I 1793 couldn't remember that.

Q. Well, was it before or after you severed your connection with the Associated Advertising? A. Well, it was—the business relationship was that I was selling for the firms and I could continue selling or not sell.

Q. I see. A. That was the connection.

Q. And you were paid a commission, is that right? A. That is correct.

Q. I think you told us yesterday that you got 5 per cent of all your business? A. That is right.

Q. And you didn't get a check every week of \$120, did 1794 you? A. I got a check from a hundred to \$150.

Q. For every week? A. Every week I would draw.

Q. Let us take the year 1941. Did you get a check every week then for \$120? A. Well, I can say most of it. I will say at least 35, 30 or 35 weeks.

Q. Did you have any interest in the Associated Advertising Company other than the 5 per cent commission? A. No.

Q. You had no interest whatsoever? A. Outside of it was a family.



*A. Kralewitch, for Deft., Cross.*

Q. Well, it was a family business? A. Yes.

1795

Q. Then, what was your interest in it? A. I was the sales manager practically, or the salesman, and I did the selling, and I made contracts.

Q. You made contracts? A. Yes.

Q. But did you own any of the stock— A. No.

Q. —of the corporation? A. No.

Q. And you did not occupy any office? A. No.

Q. None whatsoever? A. I might have temporarily have occupied an office and the chances are I didn't, but I wouldn't remember that.

Q. Who was the president? A. I believe my brother Bert.

1796

Q. Your brother Bert? A. Yes.

Q. He also had a business in Atlantic City at that time? A. Yes.

Q. Is that correct? A. That is right. If I am not mistaken it might have been his wife who was president.

Q. Bert's wife was president? A. It might have been. I don't know.

Q. Now you had a business at 1465 Broadway, isn't that correct? A. That is correct.

Q. Now, there was a business also known as the Alvin Agency? A. No.

1797

Q. Or Al Kay? A. Al Kay personally.

Q. And where was that business located? A. Right in the same place.

Q. 1465 Broadway? A. That is right.

Q. And does that still function? A. No.

Q. When was the last time that that business functioned? A. Before February of 1942.

Q. Where was this last office? A. At 1451 Broadway.

*A. Krulewitch, for Deft., Cross*

1798

Q. 1451 Broadway was the last office? A. Yes.

Q. And were all of your businesses in that building at 1451 Broadway at that time? A. No.

Q. This Alvin Kay was a separate and distinct business, is that right? A. That was my own. That was myself.

Q. And what was the other business? A. For myself.

1799

Q. Yes. A. I was publishing these magazines. I published five books called Club Members of Chicago, New York, Cleveland, and I don't just remember offhand, and not only that, I was selling advertising for the Barron Collier Company and also for the Kay Outdoor Advertising Company, which owned a lot of outdoor signs, and at the same time placing advertising with newspapers, magazines, periodicals for different hotels.

Q. Well, that book business was in 1939, wasn't it, when you went to Chicago? A. That is right.

Q. You did not engage in that after 1939? A. Oh yes.

Q. You did engage in it after 1939? A. Yes.

Q. You say you met the witness Sorrentino in 1939, in June; is that right? A. No. In May I believe it was.

1800

Q. In May, 1939? A. Yes, that is to the best of my memory.

Q. Well, now, you now state that you knew her in May, 1939? A. That is right.

Q. In the first trial you told us that you knew her in June—you met her in June, 1939, is that correct? A. Yes.

Q. And at that time you said that you were living at 10 Park Avenue, is that correct? A. That is correct.

Q. And you say you left her at the Alamac Hotel, is that correct? A. Alamac Hotel.

*A. Krulewitch, for Deft., Cross.*

Q. Alamae Hotel. And when you were driving up, she was going up to meet people at 123rd Street— A. Yes. 1801

Q. —and Broadway; is that correct? A. She told me that.

Q. Yesterday you told us that you actually went up to 123rd Street and Broadway? A. That is right.

Q. And going up in the car, or, after she went to this apartment, coming down she got sick; is that correct? A. Oh no. That was on the ride to Coney Island.

Q. On the ride to Coney Island she got sick? A. Yes. That was much later.

Q. It was much later. Yesterday you said, and I am reading from page 10 of the record: "When we came back from Coney Island—no, on our way down, I remember this very distinctly, she became violently ill. I didn't know what was wrong with her, but I stopped the car at the first drugstore. I took her into the drugstore and I asked them to get a doctor for her." 1802

Is that what you testified yesterday? A. Yes.

Q. Yesterday you didn't say that she got sick on the way to Coney Island? A. If you read before—

Mr. Todarelli: That is what I interpret it to mean, your Honor. 1803

A. (Continuing) If you read before you will see that I did.

Mr. Todarelli: On the way back from Coney Island, he says no, on the way down. You have to read Coney Island into the context there.

Q. And you asked the man to call a doctor, is that correct? A. I did. I asked him if she needed a doctor.

Q. Didn't you say— A. (Continuing) And if she did to call a doctor, she was ill.

*1 Krulwitch, for Deft., Cross.*

1804 Q. Didn't you tell us yesterday that you asked the man to call a doctor? A. I couldn't remember the exact words.

Q. You mean you can't remember what you said yesterday? A. I do remember what I said yesterday.

Q. That is what I am asking you, Mr. Kay. Did you tell us yesterday that you asked the man in the drug-store to call a doctor? A. That I did, yes.

Q. Did he call a doctor? A. No.

Q. And then you say she was in the back room with the man for about a half an hour? A. That is right. About 20 minutes to a half hour.

1805 Q. Now, in the first trial, let me ask you if this question was asked and if you made this answer, and I might read one or two questions preliminarily. Referring to the witness Sorrentino this question was asked:

"Q. When did you become first acquainted with her? When did you become acquainted with her first? A. I believe in June, 1939.

"Q. How? A. It was through a flirtation.

"Q. On the street? A. On Broadway at 47th Street, approximately.

"Q. In June, 1939? A. That is right.

1806 "Q. Tell us what happened between you and her on that day? A. I met her and we went to Coney Island. It was a very warm day. And if my memory is right—and we drove down to Coney Island, we stayed there until 8 o'clock or 9 o'clock, and we drove back again, and I left her at the Alamac Hotel where she was staying."

Did you make that answer? A. I did.

Q. Now, at that time you made no statement about going up to visit people on 123rd Street and Broadway, did you, sir? A. No, I only mentioned in that statement from Coney Island on.

*A. Krulewitch, for Deft., Cross.*

Q. I see. You only mentioned it from Coney Island on? 1807

A. That is right.

Q. Well, you said, "We drove down to Coney Island"; is that correct? A. Yes.

Q. In that statement you didn't tell us at that time that she got sick on the way to Coney Island? A. I must have in another part.

Q. You must have in another part? A. I probably did if it was asked of me. I don't remember.

Q. You don't remember whether it was asked of you or not? A. That is correct.

Q. But yesterday you remembered very vividly that she got sick? A. Yes. 1808

Q. Yesterday you testified that you asked her her name, is that right, and she gave you the name Joyce Winters? A. Yes, she gave me the name Joyce Winters.

Q. And then you said out of a clear sky, "Give me your right name"? A. No. A little later I asked her what her right name was.

Q. A little later you asked her her right name, is that right? A. Yes.

Q. Then she gave you the name Walakowski, is that right? A. Ann Walakowski. 1809

Q. Ann Walakowski. Yesterday these questions were asked:

"Q. Did she give you her name? A. Yes.

"Q. What name did she give you? A. She gave me the name of—she said her name was Joyce Winters and I said to her, 'Tell me, what is your right name?' She said, 'Well, to tell you the truth my right name is Walakowski.'"

Did you make those answers yesterday? A. That is right.



*A. Krulewitch, for Deft., Cross.*

1810 Q. You didn't tell us yesterday that the name Walakowski was given to you at some later date by this witness?  
A. Not later date. I said a few minutes later.

Q. Oh, a few minutes later she gave you the name?  
A. Yes. Not a later date.

Q. And you gave her the name Alvin Kay, is that right?  
A. That is right.

Q. Now, when you returned from—the next time, you testified yesterday that you called the Alamac Hotel, is that correct? A. <sup>du</sup> That is right.

Q. And you asked for her under the name Walakowski, is that right? A. No.

Q. What name did you ask for? A. Joyce Winters.

Q. You knew her true name at that time was Walakowski, did you not? A. I did.

Q. But you didn't ask for that name? A. She told me she went under the name of Joyce Winters.

Q. And you were advised that there was no one registered there by that name? A. Of Joyce Winters.

Q. And then you said that you didn't see her for a day or two thereafter; is that right? A. I might have seen her the next night.

1812 Q. The next night? A. Yes.

Q. Where did you see her the next night? A. I don't remember. I know I remember meeting her a few times at 71st Street and Broadway. That was right on the corner of the Alamac Hotel.

Q. I see. You met her there? A. Yes.

Q. Yesterday, and am I correct in understanding your testimony to be that the day you met her you took her to Coney Island, then you left her at the hotel; is that right?

A. That is right.



*A. Krulewitch, for Deft., Cross.*

Q. Then you didn't see her again for a day or two, is that right? A. I might have seen her the next night. 1813

Q. The next night? A. Yes.

Q. But where you saw her the next night or where you met her, you don't know; is that correct? A. Yes. On 71st Street and Broadway.

Q. And then when you made the telephone call, you told us yesterday you found later that she was living with friends, is that right? A. That is what she told me.

Q. Didn't you give us that testimony yesterday, that this woman was living with friends at the Alamac Hotel because you knew that if you told us that she was living at the Alamac Hotel under the name of Winters or Walakowski, that the fact could be checked? 1814

Mr. Todarelli: Your Honor, the reason I object is because I don't understand the question.

The Court: I think the question is perfectly clear. Do you want to have it read?

Mr. Todarelli: Please.

The Court: Yes. You may read the question.

(Question read.)

A. Well, I will answer—

Q. Answer my question. A. No. 1815

Q. Now, yesterday you testified, sir, that you did not live with her prior to your going to Chicago; is that correct?

A. Yes.

Q. Although you testified that the apartment on 156th Street had been rented prior to your going to Chicago, is that right? A. Yes.

Q. But it was unfurnished? A. Yes.

Q. Now, do you remember that on July 2, 1943 you ap-

*A. Krulewitch, for Deft., Cross.*

1816 appeared at the U. S. Attorney's office with your attorney a Mr. William J. Wilson? A. I do.

-Q. Do you remember at that time that a question and answer statement was taken from you by Mr. Wallace? A. I do.

Q. Do you remember these questions and these answers that were asked on July 2, 1943:

"Q. Did you live with her about a week thereafter?

A. Yes.

"Q. At your apartment? A. Yes.

"Q. On 156th Street? A. That's right.

1817 "Q. And after that week did you go to Chicago with her? A. That's right."

Were those questions asked you and did you make those answers? A. I never made those answers.

Q. In other words, this record is inaccurate; is that correct? A. That record, the answers to that record is definitely inaccurate.

Q. A forgery? A. Not a forgery.

Q. Incompetence on the part of the stenographer then? A. I won't say that. I will say on the part of the District Attorney.

1818 Q. By Mr. Wallace? A. That is right.

Q. He made the girl make those answers— A. Yes. I don't say that.

Q. —write those answers down? A. I won't say that. Those are not the answers that I gave.

Q. Those are not the answers that you gave? A. Yes.

Mr. Hilly: So that there can't ever be any mistake with respect to this, if your Honor please, would like to have this marked for identification

*A. Krulewitch, for Deft., Cross.*

(Marked Government's Exhibit 31 for identification.) 1819

Q. Now, you said yesterday that prior to your trip to Chicago you had been intimate with her; is that correct, sir? A. Yes.

Q. And where did this take place? A. Well, I believe on one occasion—do you want each and every occasion?

Q. No. Just tell me generally where it took place. A. I believe the first time was at 10 Park Avenue, to the best of my knowledge.

Q. At your apartment? A. It might have been, and it might not have been. But to the best of my knowledge it might have been there. 1820

Q. Now, at 10 Park Avenue—you were living there, is that correct, sir? A. That is right.

Q. You had a lease, is that right; you had a lease at 10 Park Avenue? A. Yes.

Q. And did you pay rent there or did you give 10 Park Avenue a duebill? A. I paid rent in the form of a duebill.

Q. You paid rent in the form of a duebill? A. Yes.

Q. But you were giving them a duebill, is that right? A. No, I was giving them advertising in exchange for the apartment. 1821

Q. Were you intimate with her in any other place before you went to Chicago? A. Yes.

Q. Where were you intimate with her? A. I would not remember the places.

Q. You don't remember the places? A. No.

Q. Was it on 156th Street in the unfurnished apartment? A. No.

Q. Was it at the other apartment of Pauline Hillson on 156th Street? A. No.

*A. Krulewitch, for Deft., Crüss.*

1822 Q. Now, in Chicago you said that was the first time you lived together, is that right, with the witness Sorrentino? A. That right? A. I just told you I was with her a few times before.

Q. That is what was not clear in my mind. So that you had been with her a few times prior to Chicago, is that right? A. I think so.

Q. Well, you know so, don't you, sir? A. That is a hard thing for me to remember. But I can say I believe so.

1823 Q. Now, on the first trial were these questions asked and did you make these answers:

"Q. Did she live in the suite with you? A. She did.

"Q. That was the first time you ever lived together. A. That is right."

Did you make— A. Yes, I made those answers.

Q. She remained in Chicago with you for a short period of time and then she came back to New York, is that correct? A. Yes.

Q. On a Greyhound bus? A. Yes.

Q. And you paid the bus fare? A. Yes.

1824 Q. And you also sent a telegram to Miss Hillson, is that correct? A. I never sent the telegram.

Q. You never sent the telegram to Miss Hillson? A. No.

Q. Now, at this time you said you didn't—Joyce did no work, is that right, you were supporting her? A. At which time?

Q. When you met her and took her to Chicago she was not working? A. Oh, no, she was supposed to have been working.

Q. She was supposed to have been working? A. She told me she was working.

*A. Krulewitch, for Deft., Cross.*

Q. And did she tell you what work she was doing? A. 1825  
She said she was a waitress.

Q. She said she was a waitress. Did you question her as to where she was working? A. I did not.

Q. And in Chicago you were registered in the Drake Hotel as Mr. and Mrs. Al Kay, is that correct? A. Mr. and Mrs. Alvin Kay.

Q. Had marriage been discussed between you at that time? A. No.

Q. You weren't in love with her at that point? A. I cared a great deal for her.

Q. You were slowly falling in love with her? A. That 1826  
is right.

Q. But you said that throughout your association with her from time to time you and she discussed marriage, is that correct? A. That is correct.

Q. But it was postponed because of her illness, is that correct? A. That is right.

Q. And it was postponed because she said it was a very serious step; is that correct? A. At one time.

Q. Yes. She said it was a very serious step? A. Some-  
thing to that. I can't just say the exact words, but it was  
something along that line, that it was a serious step or 1827  
something.

Q. And she wanted to be sure that she loved you? A.  
No, I wouldn't say that. I honestly felt that she did.

Q. That was the reason why you never married; is  
that right? You never married while you were associated  
together; is that correct? A. We never were married, no.

Q. No. You never married her because of those rea-  
sons, is that right? A. No. I thought that she loved me,  
but as it turned out I found out that she didn't.

*A. Krulewitch, for Def., Cross.*

1828 Q. You found out that she didn't love you? A. That is right.

Q. That is the reason why you didn't marry her? A. That is not the reason. If she would have said yes, I would have been married to her.

Q. You would have married her at any moment if she said yes? A. In 1941, yes.

Q. During 1939 you would have married her? A. No, not the first time I met her or the first week I met her.

Q. When she was in Westfield State Farms you would have married her? A. Yes. By then I had known her a couple of months and she seemed to be a fine girl.

1829 Q. She seemed to be a very fine girl? A. That is right.

Q. And you would have married her then? A. That is right.

Q. And from that time on, up until you went to Florida in November of 1941, at any time that she said yes you would have married her? A. I will say anytime from 1941—

Q. From 1939, she went to Westfield State Farms—  
A. From the time she was in Westfield State Farms right up until the time we broke up, had she said yes I would have married her.

1830

Q. And you were madly in love with her at that time? A. I was.

Q. When she was in the institution that was the time that you realized that you were madly in love with her?

A. More so than ever.

Q. There was a great desire at that time, is that right? You loved her greatly? A. Why, sure.



*A. Krulewitch, for Deft., Cross.*

Q. And is that the reason why you took up with Bernice 1831  
in August, 1940, and lived with her at 325 East 77th Street?

A. Bernice?

Q. Yes, Bernice. A. At 325?

Q. East 77th Street. A. That was not in August.

Q. When was it, sir? A. I can't even remember that.  
That was just for a few days.

Q. That was just for a few days, or was it a few  
months? A. A few days.

Q. Just a few days, is that all? A. That is all.

Q. What was Bernice's name? A. Bernice Byrnes.

Q. Bernice Byrnes. 1832

Q.—and I am reading from your direct examination  
of yesterday—"Did you take up with any other woman  
during the time that Joyce was there? A. I believe it  
was during August, I believe it was during August some  
time, some time in the summer time I did, with a girl, for  
about two weeks, three weeks, maybe.

Q. What was her name? A. Bernice."

A. That is right.

Q. So that it was not a few days, then, was it? A. All  
right, two weeks.

Q. Or three weeks? A. I don't think it was that long. 1833

Q. You said yesterday three weeks. A. All right, I  
won't—all right.

Q. But, nevertheless, despite your association with this  
woman here you were still madly in love with Joyce  
in Westfield State Farms? A. That is correct.

Q. Now, you say that after you returned from Chicago  
you then furnished the apartment on 156th Street, and you  
and Joyce lived there, is that right, or you visited her?

A. I visited her.

*A. Krulewitch, for Deft., Cross.*

1834

Q. And that apartment was taken in the name of Bert Lewis, is that right, sir? A. That is right.

Q. And you visited her from time to time, is that right? A. That is right.

Q. Let me read these questions and these answers from the first trial:

"Q. But after you did meet her—but you did meet her after you returned to New York? A. Oh, yes.

"Q. Did the two of you go to live at any place together? A. Yes, we did.

"Q. Where? A. At 174th Street I believe, 610 West 174th Street."

1835

Were those questions asked and did you make those answers at the first trial? A. Yes. But there seems to be some mistake. There was no apartment at 174th Street at that time.

Q. There was no apartment at 174th Street at that time? A. No. There seems to be—

Q. So that you were in error then, is that correct? A. I was not in error, but probably the question—

Q. The question was in error, or was the court reporter in error? A. I don't know just what it is, but there was no 174th Street apartment at that time.

1836

Q. Or— A. But I did go to live with her at 174th Street.

Q. But you didn't, as you said here in the first trial, go to live with her at 174th Street upon your return from Chicago? A. No. Yes. After my return.

Q. But you first lived at 156th Street, is that correct? A. Yes. That was for a very short period, probably one month.

*A. Krulewitch, for Deft., Cross.*

Q. You said yesterday that you rented both of the apartments on 156th Street, is that correct, sir? A. That is correct. 1837

Q. The one you rented in the name of Bert Lewis, is that correct? A. That is correct.

Q. That was located at 515 West 156th Street, is that correct? A. Yes.

Q. And the other one you rented in the name of Ben Gordon, is that correct, sir? A. Yes.

Q. And that was rented—that was the apartment located at 555 West 156th Street, is that correct? A. Yes.

Q. And on this paper here, that name Ben Gordon is written by you, is it not, sir? A. Yes. 1838

Q. And on the lease the name Ben Gordon is written, is that correct? A. Yes.

Mr. Hilly: I will offer these in evidence, Mr. Todarelli.

Mr. Todarelli: No objection.

The Court: It will be received and marked as an exhibit.

(Marked Government's Exhibits/32 and 33.)

(Mr. Hilly reads from Government's Exhibits 32 and 33 to the jury.) 1839

Q. Now, you told us yesterday that this apartment you rented for Miss Hillson, is that correct? A. That is correct.

Q. At Miss Hillson's suggestion; is that right? A. That is correct.

Q. At that time you knew Miss Hillson but you didn't know her very well; is that right? A. That is correct.

Q. As a matter of fact, throughout this entire period you didn't know Miss Hillson—you didn't become friendly with her to any great extent, did you? A. Sure.

*A. Krulewitch, for Deft., Cross.*

1840 Q. You did become friendly with her? A. Well, I don't understand what you mean, I was friendly with her.

Q. You didn't speak with her very frequently? A. No.

Q. "Seldom" is the word you used yesterday I think.  
A. I seldom spoke to her.

Q. And at this time, that is, May of 1939, how long had you known Miss Hillson? A. What time is that?

Q. May 20, 1939, is the date of the application. A. I would say about ten days.

Q. You knew her about ten days at that time? A. Approximately; maybe a few days more or a few days less.

1841 Q. And you met her first, is that correct, before Joyce did? A. I met her with Joyce.

Q. Yes, but where did you meet her? A. We met her coming out of the movie.

Q. Coming out of the movie. You and Joyce were there and she came out? A. That's right.

Q. And you met her at that time? A. That's right, and she came out with a boy friend, and the four of us were talking, and while we were talking she invited her down to see her place.

1842 Q. Invited who down to see what place? A. She invited Joyce down to her place on 81st Street called the Blumengarten-Cafe.

Q. The Blumengarten Cafe, is that correct? A. That is correct, and she invited her down there and told her to come down, and Joyce went down—

Q. So that— A. —and they became very friendly.

Q. But you did not become friendly? A. I became friendly through Joyce, but we had nothing in common.

*A. Krulewitch, for Deft., Cross.*

Q. So that knowing this woman a period of ten days you then went up and signed this lease, is that correct? A. That is correct. 1843

Q. Because she asked you? A. Because she asked me, and she had a restaurant and I took it for granted that she was all right.

Q. You took it for granted that she was all right? A. That is right.

Q. Even though you only knew her ten days? A. That's right.

Q. Of course, you will admit that you didn't tell them that you were renting it at that time for Pauline Hillson, did you? A. I did not. 1844

Q. You concealed that fact, is that right? A. That's right.

Q. You didn't tell that to anyone, is that right, sir? A. That is correct.

Q. Now, you received this letter from H. F. Byrnes and marked the O. K. that appears down there, is that correct? A. It does say when I received this from Byrnes, but it doesn't say what apartment.

Q. No, but you received it as a reference for Mr. Ben Gordon? A. Yes. 1845

Q. And that is your O. K. that appears down there, is that correct? A. Yes.

Q. And you also gave as a reference the Associated Advertising Company, is that correct? A. That is correct.

Q. And that is their O. K., is that right? A. I believe so.

Q. Well, you recognize the signature, don't you, sir? A. No, I don't. I don't recognize the signature.

Q. You don't recognize the signature? A. No.



*A. Krulewitch, for Deft., Cross.*

1846

Q. Well, didn't you have a conversation with someone at the Associated Advertising before— A. I will concede—

Q. Don't concede anything. I want to know the facts on it. A. I don't recognize that signature.

Q. But you do recall having a conversation with someone at the Associated? A. I was there every day.

Q. Then this letter came in to you, did it not? A. It came to the office, yes, sir.

Q. And it was referred to you, is that right? A. I think it did. I am pretty sure it did, if it was mailed.

1847

Q. Well, you were the only one in the Associated that knew of the name Ben Gordon, is that correct? A. No. Will you let me answer that?

Q. Were you the only one that knew the name of Ben Gordon at the Associated? A. There was a Ben Gordon at the Associated working there.

Q. There was a Ben Gordon? A. There was a Ben Gordon, and Ben Gordon was living at the Park Central.

Q. At the Park Central at that time? A. That is correct.

1848

Q. Well, is that then how you happened to know the name Ben Gordon? A. That is correct, that is how I come to know the name.

Q. Of Ben Gordon? A. There was a Ben Gordon.

Q. I see. So that when you went up to rent the apartment— A. If you want me to go further, he is a brother of the outdoor in Long Island. He has a brother who has an outdoor company in Long Island, and I believe you can get the information from them where he is at, Ben Gordon, and there was a Ben Gordon with the company, with us.

Q. Well, you will concede, will you not, sir, that these two letters here— A. Were sent out.



*A. Krulewitch, for Deft., Cross.*

Q. —were sent out? A. Yes.

1849

Q. And they were sent out as a result of Government's Exhibit 32? A. Yes.

Q. And 33? A. Yes.

Q. And they do not refer to the Ben Gordon living at the Park Central Hotel? A. Yes.

Q. They refer to you? A. That's right.

Q. But you knew of Ben Gordon, is that correct, sir?  
A. That's right.

Q. And that's how you happened to put the name Ben Gordon down? A. That's right, and I put everything pertaining to my home address and business, and if I thought there was anything wrong I surely wouldn't do that.

1850

Q. And that you did for a woman you knew only ten days? A. I thought that she was of a good reputation. She had a nice place of business, and I was willing to do that because I could always pick that woman up from her place of business, and I surely wouldn't have given my whole history if I thought there was anything wrong.

Q. No, but you might have given your whole history, sir, if it was going to be used as a house of prostitution and you were going to make a substantial income off it, wouldn't you? A. Definitely not. I would not be a party to anything like that.

1851

Q. Let me read this testimony from yesterday:

"Q. Well, was she living there during the entire month?

A. Well, I would have to explain that to you.

"About a week after, or even less than a week after we met Pauline Hillson, and Pauline Hillson asked me to get an apartment for her at 156th Street. She had seen the apartment at No. 555, and she asked me to take it under the name of Gordon, which I did, and when I got there and took this apartment they asked for references, and I believe I

*A. Krulewitch, for Deft., Cross.*

1852 gave myself as a reference for her, not knowing her at that time outside of—I knew her but didn't know much about her."

Did you give that answer yesterday? A. That is correct.

Q. Well, at that time yesterday you did not tell us that you used the name Ben Gordon because you knew Ben Gordon at the Park Central? Didn't you tell us yesterday that you used the name Ben Gordon at the suggestion of Pauline?

A. No, that was in the conversation.

Q. This record here that I just read to you is in error?

1853 A. The record is not in error.

Q. Then you concede that is an accurate record? A. I do.

Q. Then the stenographer when he took it down must have misunderstood you? A. No, you're trying to confuse it.

Q. I am not trying to confuse anything, sir.

Mr. Hilly: I will offer these two pieces of paper in evidence.

Mr. Todarelli: We will concede that—

The Court: Is there any objection to the papers.

Mr. Todarelli?

1854

Mr. Todarelli: They were sent, but I object to them on the ground that they are unnecessary.

The Court: They may be admitted and marked as exhibits.

(Marked Government's Exhibits 34 and 35.)

Mr. Todarelli: What page did you read from, Mr. Hilly, just now?

Mr. Hilly: I read from page 13.

The Court: We will take our recess now until 2:45.

(Recess to 2:15 p. m.)

*A. Krulewitch, for Deft., Cross.*

Afternoon Session:

1855

ALVIN KRULEWITCH, resumed the stand.

Mr. Hilly: I just want to direct the jury's attention to Government's Exhibits 34 and 35 in evidence.

(Mr. Hilly reads from Government's Exhibits 34 and 35 to the jury.)

CROSS EXAMINATION continued by Mr. Hilly:

Q. You don't know that signature, do you? A. No.

Q. When you took the lease of the apartment at 325 East 77th Street, one of the references you gave was Mr. Ben Gordon; is that correct? A. That is correct.

1856

Q. You gave the reference of 610 West 174th Street?

A. Yes.

Q. This was a letter of reference that you received from Milton Barkin Management Corporation? A. Yes, I wrote that.

Q. That is your handwriting? A. Yes.

Mr. Hilly: I will offer that in evidence.

If your Honor please, I want to approach the bench for just a moment with Mr. Todarelli.

(Conference at the bench between Court and counsel off the record.)

1857

Mr. Todarelli: No objection, your Honor.

The Court: It may be received.

(Marked Government's Exhibit 36.)

(Mr. Hilly reads from Government's Exhibit 36 to the jury.)

Q. You wrote this, Mr. Kay. You can probably decipher that word for me. A. "and honest."

Mr. Hilly (reading): "very fine fellow and honest and can recommend him highly. Very truly yours, Ben Gordon."

*A. Krulewitch, for Deft., Cross.*

1858 Q. You gave yourself a very nice recommendation then, didn't you? A. I did.

Q. You didn't do that for Mrs. Hillson, did you? A. No. That was myself.

Q. That you did for yourself that time? A. That is correct.

Q. Now, when we talk about Mrs. Hillson, we mean Government's Exhibit 1 in evidence; is that correct? A. That is correct.

Q. And you also knew her by the name of Rose Sookerman, is that right, sir? A. I know her now as Rose Sookerman.

1859 Q. What name did you know her by at that time? A. Pauline Hillson.

Q. That was the name this Frank Russo introduced her to you as? A. That is correct.

Q. Now, at 10 Park Avenue you lived with a woman by the name of Rose Bloom, is that correct? A. For part of the time.

Q. All right. For what part of the time did you live with that woman? A. I don't remember the exact time. It was between 1934 and late 1937 some time.

1860 Q. As I understood you this morning, you paid the rent there by advertising for them, is that correct? A. That is correct.

Q. Didn't you go in there first under a duebill from Barron Collier? A. Yes, that is what I said.

Q. Were you employed by Barron Collier at that time? A. Yes, I represented Barron Collier throughout the United States.

Q. You represented Barron Collier throughout the United States? A. Yes, that is correct.

*A. Krulewitch, for Deft., Cross.*

Q. And you were registered there as Mr. Alvin Kay? 1861

A. That is correct.

Q. Now, Mr. Kay, don't you recall, sir, that you lived at 10 Park Avenue with Rose Sookerman, or Pauline Hillson? A. No.

Q. Wasn't she known there by two names; A. Rose Bloom, and B, as Mrs. Alvin Kay? A. No.

Q. You are certain of that fact? A. Positive.

Q. There can't be any doubt in your mind about that?

A. No doubt whatsoever.

Q. Now, you say Miss Sookerman or Miss Hillson had a restaurant or a cafe, is that right? A. Yes. 1862

Q. And where was that located, sir? A. On 81st Street between First and Second Avenue.

Q. And that was known by the name of Blumengarten Cafe, is that right? A. Blumengarten Cafe.

Q. That is a contraction of the name "Bloom" the word "in" and "garden", isn't that correct? A. No, that is taken from the German word flower garden.

Q. Flower garden? A. Yes.

Mr. Todarelli: It is B-l-u-m-e-n-g-a-r-t-e-n, your Honor, I think.

The Witness: Yes. 1863

Mr. Hilly: All right, if that is it then.

Mr. Todarelli: But I believe the record shows it otherwise.

The Witness: Yes.

Q. Now, do you know what business she was in at that time when you met her? A. No.

Q. When did you realize or come to know the business she was in? A. When Joyce told me she went to see her and she had told Joyce about this place that she had on 81st Street.

*A. Krulwitch, for Deft., Cross.*

1864

Q. Now, you said this morning that the last name of Bernice was Bernice Byrnes, is that correct? A. I believe so.

Q. Well, was there any doubt in your mind this morning on that point? A. There was no doubt.

Q. Let me ask you if you remember these questions and these answers being asked on July 2, 1943, when you were questioned by Mr. Wallace:

Q. Where is it? A. What is this Bernice's last name? A. I don't know.

Q. You don't know her last name? A. No."

1865

Were those questions asked of you and did you make those answers? A. That is correct.

Q. And those questions and answers are correct? A. I didn't know at that time.

Q. You didn't know at that time? A. I didn't remember it at the time. I knew the name but I didn't remember it.

Q. Well, you didn't say "I don't remember"; you said, "I don't know." A. Well, I said, "I don't know. I didn't remember it."

1866

Q. And when you said "I don't know" you meant "I didn't remember it," or "I don't remember"? A. That is right. I didn't remember. That is what I meant.

Q. Now, you say you knew Joyce Winters' last name a short time after you met her, is that correct? A. That is correct.

Q. Let me just continue first with respect to Bernice's last name the next question that follows:

Q. You didn't know her last name? A. No."

Mr. Todarelli: What page is that please?

Mr. Hilly: Page 9 of Government's Exhibit 31 marked for identification.



*A. Krulwich, for Deft., Cross.*

Mr. Todarelli: Oh, I thought you were reading 1867  
from the record.

Q. "Q. You didn't know her last name? A. No."

And by that you just said that you didn't remember, is that right? A. That is correct.

Q. That is what you meant when you said that? A. That is correct.

Q. The next question is:

"Q. You lived with her for a length of time and you don't know her last name? A. That's right. I didn't know Joyce's last name. She told me it was Walakowski." A. That is right, Walakowski. 1868

Q. But at that time weren't you then making the statement when you made that answer that you were sure in your own mind that you didn't know Bernice's last name? A. No, I didn't remember it. I really didn't remember it at that time.

Q. The next question is:

"Q. When did you first learn Joyce's last name? A. When she was in the institution I wrote a letter to the institution." A. That is correct.

Q. Well, then, I thought you told us that you learned Joyce's last name a short period after you met her? A. 1869  
The last time that I learned was Walakowski, but that wasn't her right name. She just told me that. I learned the name of Johnston.

Q. Then that is what you meant? A. Yes.

Q. Did you ever own any cider stubes? A. Yes.

Q. What were the names of those cider stubes? A. I owned the Royal and the Club.

Q. And did you own the Ace? A. And the Ace. Three.

Q. And did you ever sell any of those cider stubes? A. Yes.

*A. Krulivitch, for Defendant Cross.*

1870

Q. And to whom did you sell them? A. The first one I sold to a Mrs. Sherman and her daughter.

Q. And the second one? A. The second one I sold to Pauline Hillson.

Q. That is this woman here, as indicated in Government's Exhibit 1? A. That is right.

Q. And to whom did you sell the other one? A. The other one I sold to fixtures, I did not sell the place at all.

Q. You did not sell it to anyone? A. No.

Q. Where were these cider stubes located that you sold, sir? A. 1590—

1871

Q. What street is that near? A. Second Avenue, near 82nd Street.

Q. And? A. And 1594 or 92, 1590, something like that. 1594 and 1590 I believe, Second Avenue.

Q. That is near 82nd Street? A. That is near 82nd Street.

Q. Where was the other one located? A. The three of them were together. Oh. I had two at 1590 and one at 1594.

Q. On Second Avenue? A. That is right.

Q. They were between 81st and 82nd Streets? A. That

1872 is right.

Q. When did you sell the cider stubes to Pauline Hillson? A. In 1942 I believe, right before 1942.

Q. Right before 1942? A. Yes.

Q. How much before 1942 do you mean? A. That I don't remember, but I know it was before—it was in nineteen forty—now, wait a minute. I sold her that place late in 1942.

Q. Late in 1942? A. I think it was, yes.

Q. How late was it in 1942? A. Let's see. I don't re

*A. Krulwich, for Deft., Cross.*

member, I really don't remember the date. It might have been in 1940. I don't even know. 1873

Q. It could have been in 1940? A. I am pretty sure it wasn't, I am almost sure it wasn't.

Q. Don't you remember, Mr. Kay, that you sold that cider stove to Pauline Hillson just prior to the time that Joyce disappeared? A. No. That I am positive.

Q. You are positive of that? A. That is right.

Q. Now you have testified, when you have testified with respect to Pauline, that Pauline was Joyce's friend? A. That is correct. They became very friendly.

Q. They became very friendly. And she is Joyce's friend? A. That is right. 1874

Q. Now, you took the apartment at 515 in the name of Bert Lewis, is that correct? A. That is correct.

Q. And you said yesterday that you took that apartment in that name because you didn't know how long the friendship between you and Joyce was going to last? A. That is right.

Q. And there were certain little things you were noticing at that time? A. That is right.

Q. What were those little things you were noticing at that time? A. Well, I was scrutinizing her, what she would say, in this way: When I would make a date with her she would show up an hour late; I would wait. She would come up another time, just a lot of little things like that that didn't mean anything, and I was wondering whether she did like me or not. 1875

Q. You mean you took the apartment in the name of Bert Lewis because Joyce wasn't punctual for your appointments? A. No. I took the apartment because I didn't want the financial responsibility on my own name. I was

*A. Krulewitch, for Deft., Cross.*

1876 responsible and I would have to pay the rent in the event anything wasn't right, the party would not be satisfied or move out, or we didn't take it.

Q. So that if anybody was going to get stuck on 515 you wanted the landlord to get stuck? A. That is correct.

Q. That is precisely what you are doing here today, isn't it, sir? Since you took that witness stand yesterday you don't care who gets blamed for this transportation of this woman in interstate commerce just so long as you can wiggle out; isn't that correct?

Mr. Todarelli: I think, your Honor, that is going a little too far. That is arguing with the witness.

The Court: He may answer.

A. I would not be on this stand—

Q. Would you answer my question? A. I will answer it. I wouldn't be on this stand if I had any connection with anything like that.

Q. Is that the reason why you didn't take the witness stand at the second trial? A. That reason was that my counsel asked me not to, their advice, rather, and also on the reasons that I mentioned before, my attorney thought it best for me not to.

1878 Q. Did you know that Rose Sookerman had been arrested at 171st Street? A. I did not.

Q. Did you know that Rose and Joyce had both been arrested at 171st Street? A. At the time they were arrested?

Q. Yes. A. No.

Q. When for the first time did you learn that? A. The time with the attorney.

Q. When? A. Oh, it must have been in November.

Q. November of what year? A. 1939.

*A. Krulovitch, for Dett., Cross.*

Q. November of 1939? A. I believe.

1879

Q. You learned that with the attorney, is that correct?

A. That is right.

Q. That is the attorney whose name you do not recall?

A. That is correct.

Q. And you knew that they had been arrested for prostitution? A. No, I did not.

Q. You didn't know that they hadn't been arrested for prostitution? A. No.

Q. But you did know that both of them had been arrested in November, 1939? A. No. What I knew was that Joyce was picked up for a violation of her parole. That is what I was told.

1880

Q. You also knew, did you not, at that time that Rose had been arrested? A. No.

Q. You didn't know that? A. No.

Q. Let me read you these questions and these answers:

"Q. Did you know she was arrested on 171st Street? A. That's right. But she wasn't a prostitute.

"Q. Who took her bank book and took it down to the bondsman and was there when she came out after the bail was put up? A. If I remember, I might. I don't remember, but there is a possibility that she told me to go to the bondsman or wherever it was with the bank book. A. I don't remember it.

1881

"Q. Joyce and she were arrested together? A. That's right."

Did you make those answers? A. What date is that?

Q. July 2, 1943. A. On July 2nd I knew about it.

Q. But you did know about it then? A. In 1943, yes.

Q. Oh, you knew about it then? A. Yes, July 2, 1943. You are speaking of November, 1939.

*A. Krulewitch, for Deft., Cross.*

1882 Q. Let me ask you this question:

"Q. Who took her bank book and took it down to the bondsman and was there when she came out after bail was put up? A. If I remember, I might. I don't remember, but there is a possibility that she told me to go to the bondsman or wherever it was with the bank book. I don't remember it."

A. I never made those statements.

Q. That statement is again an error? A. That is correct?

Q. Wrong? A. Wrong.

1883 Q. Incorrect? A. Incorrect.

Q. A forgery? A. I won't say forgery. The answers are incorrect.

Q. The answer is incorrect.

Mr. Todarelli: What page is that on, please?

Mr. Hilly: That is on page 8.

Q. Let me ask you if this question was asked you on July 2, 1943 and if you gave this answer, and I am reading now from page 4.

Mr. Todarelli: I would like to have a copy of that statement. Could I have a copy?

1884 Mr. Hilly: After I finish with it I will give it to you.

It is not a signed statement.

"Q. Did you ever rent a second apartment at 156th Street? A. No, sir."

Q. Did you make that statement on July 2nd? A. No.

Q. That is wrong, too? A. That is right.

Q. Now, at 325 East 77th Street, Joyce lived with you there, is that correct? A. Yes.

Q. And Rose Sookerman lived there? A. She lived



*A. Krulwitch, for Deft., Cross.*

there at the last week that Joyce was there, because she was supposed to go to Florida on or about the 10th and she had no—she had given up her place where she was living, and the last week of October she was living there. 1885

Q. She was living there. That is clear, is it not, sir: You are certain of that fact, that she only lived there for about a week during October, 1941? A. That is correct.

Q. And you heard the testimony of the witness Dolan, is that correct, sir? A. I did.

Q. Now you say that Miss Hillson had this restaurant; is that correct? A. That is right.

Q. And were you in the restaurant? A. I was. 1886

Q. On occasions with Joyce; is that right? A. That is right.

Q. And a good business was transacted there? A. I didn't know the business.

Q. You saw there were other people present in the restaurant besides yourself? A. There were a couple of people sitting there.

Q. And you told us yesterday that you went down to Florida in September and you rented the El Chico Hotel because Pauline Hillson wanted a small business from which she could get a small income, is that right? A. No, she wanted to get as much income as she could get, in my opinion. 1887

Q. Get as much income as she could. But she wanted the business? A. That is right.

Q. That was the reason for your going down to Florida, one of the reasons why you went to Florida? A. I went down for my own business.

Q. Did you transact any business? A. I did.

*A. Krulwich, for Deft., Cross.*

1888 Q. What business did you transact? A. The nearest that I could remember was a \$5000 contract on the Millburn Hotel. There might have been others.

Q. Now, you told us that when you were in Miami you went into the bicycle shop, is that correct? A. That is correct.

Q. And you had this conversation with Mr. Peacock, is that right? A. Yes.

Q. And then you went next door and you saw Mrs. Blumberg's mother? A. Yes.

1889 Q. And she showed you about the premises, is that correct? A. Yes.

Q. And then you went up and you saw Mrs. Blumberg, is that right? A. Yes.

Q. Let me ask you if on July 2, 1943, if these questions weren't asked and if you didn't make these answers—

Mr. Hilly: I am reading from page 10.

Q. —“Q. Before October 1st, was it not, that you left New York? A. No, around maybe September 30.”

That question and answer is correct, is that correct? A. I wouldn't remember that.

Q. Pardon me? A. I wouldn't remember that.

1890 Q. Well, do you remember that question and you making that answer? A. I couldn't remember that, because I know I was there on September 30, I was in Miami, because I was in Mrs. Blumberg's on the 1st, or a little earlier.

Q. Was this question asked you:

“Q. When you were down there did you go around to the El Chico Hotel in Miami? A. No.

“Q. You never went near it? A. On October 1st.

“Q. 1st? A. That is the first time I rented it.

“Q. You did go there then; did you? A. I didn't go to the El Chico Hotel.

*A. Krulewitch, for Deft., Cross.*

"Q. You never went to the El Chico Hotel before you rented it? A. Let me explain. 1891

"Q. (Did you go to the El Chico Hotel before you rented it? A. No, I passed there on my way to the synagogue. It was a holy day night.

"Q. You didn't go into it? A. No.

"Q. You didn't inspect it? A. No.

"Q. Did you speak to anyone about renting it? A. No.

"Q. You are sure? A. Positive.

"Q. And the next day you went over to Mrs. Blumberg's? A. What day? What happened? Was it a holy day night? 1892

"Interrupted by Mr. Wallace: Did you telephone Mrs. Blumberg? A. I was passing the place. On there was about 20 signs on the building, and on the building it said 'For Rent'. It all said for rent. It had a big sign 'Call at Mrs. Blumberg's' with her address underneath it. I didn't go into the building. I was on my way to the synagogue and she lived a couple of blocks further down from the place on my way, on the same road going out, and I stopped in to see Mrs. Blumberg and I spoke to her about the place."

Did you make those answers to those questions on July 2, 1942? A. I might have made some of them, yes. I will say yes, I did make some of them. 1893

Q. All right. Let me read you this last answer again:

"I was passing the place. On there was about 20 signs on the building it said 'For Rent'. It all said for rent. It had a big sign 'Call at Mrs. Blumberg's' with her address underneath it. I didn't go into the building. I was on my way to the synagogue, and she lived a couple of blocks further down from the place on my way, on the same road

*A. Krulewitch, for Deft., Cross.*

1894 going out, and I stopped in to see Mrs. Blumberg and I spoke to her about the place."

Did you make that answer? A. That is true.

Q. That is true? A. Yes.

Q. "Q. Did you ever speak to anyone about renting it?"

A. No.

"Q. You are sure? A. Positive."

A. Those answers I never gave.

Q. You never gave those answers? A. No.

Q. "Q. You didn't go into it? A. No.

"Q. You didn't inspect it? A. No."

1895 A. Never gave those answers.

Q. Now, did you give Mrs. Blumberg any references when you were down there? A. Yes.

Q. And who did you give as a reference? A. I gave Loomis & Hall Advertising Agency.

Q. And who else? A. I gave Leo Barbash. I gave myself—my card. I told her my business and I told her—I gave the Miami Colonial Hotel. I had a \$50,000 contract with them, and I believe I gave Mr. Boswell.

Q. Well, now, when you testified on the first trial you testified that you gave Loomis & Hall and that you gave  
1896 Mr. Leo Barbash in the automobile store. Those are the only two references that you mentioned on the first trial.

A. Well, then, I didn't give the other one. I can't remember that.

Q. Now, if you were renting the premises for Mrs. Hillson what made it necessary for you, sir, to give references for yourself? A. I didn't give references for myself.

Q. Now, then, these references of Loomis & Hall were for Mrs. Hillson? A. No, these references were to show Mrs. Blumberg who I was. She wanted to know who I was.

*A. Krulwich, for Deft. Cross.*

and I was representing a woman, and the woman wasn't there, and I asked her to call up Loomis & Hall and they would tell her who I am, and I believe asked her to call up Leo Barbash, and I asked her to call up the Miami Colonial Hotel. 1897

Q. And the only authority you had at that time, sir, was oral authority, is that right? A. That's right.

Q. Despite the fact that you told Mrs. Flumberg and Mr. Neville that you had a power of attorney but had left it in New York? A. No, I told them I had authorization. I was authorized to take the place for her.

Q. But you did not tell them that you left your power of attorney in New York? A. No, I don't remember telling them that. 1898

Q. Well, did you tell them that? A. I don't think I did.

Q. Now, then, you went to Florida, as you testified yesterday, in the latter part of September of 1941, is that correct, sir? A. Yes.

Q. And then you went down to Florida again on October 21, 1941, is that right? A. I went to Baltimore.

Q. To Baltimore and then from Baltimore you went on down to Florida? A. That is right. 1899

Q. And you remained there for a period of four or five days, is that right? A. Some three or four or five days.

Q. All right. Then you came back to New York City? A. Yes.

Q. And then you went down to Florida again in November, that is, around Thanksgiving of 1941? A. November, I believe the 20th or the 22nd.

Q. Now, at the last trial were these questions asked and did you make these answers—



*A. Krplewitch, for Deft., Cross.*

1900

Mr. Hilly: And I am reading from page 238. I am in error. It is 239, and it starts on the bottom.

Q. "Q. When did you next go to Florida? A. In October, which I explained to you, October 1st or September 30.

"Q. Did you go down there again that year? A. Yes, I went there November 22 or 23, I believe." A. Yes—well, the dates I am not sure on, the exact dates I am not sure on.

1901

Mr. Todarelli: Mr. Hilly, will you please read before that the entire context. Would you mind starting with the question on page 238, "Where were you living at this time?"

Mr. Hilly: Yes.

Q. "Q. Where were you living at this time? A. I was living at 10 Park Avenue."

Were you living at 10 Park Avenue? A. When was that?

Q. When you went to Florida? A. That means—yes—No, no, no, I wasn't living at 10 Park Avenue.

Q. So that is a mistake, is that correct? A. There is some mistake there.

1902

Q. Well, it is a mistake that you made, sir, is it not, when you said 10 Park Avenue? A. You mean at the time that I went down in November?

Q. At the time you went down at any time after you met Joyce. A. I was not living at 10 Park Avenue.

Q. You never lived at 10 Park Avenue after you went to Florida on any of the trips that you made with Joyce? A. No.

Q. "Q. When you came back from Florida where did you go on this trip on which you rented the rooming house?"



*A. Krulewitch, for Deft., Cross.*

A. I went to the apartment that I had at 325 East 77th Street. 1903

Q. With whom did you live there? A. With Joyce.

Q. When did you next go to Florida? A. In October, which I explained to you, October 1st or September 30.

Q. Did you go down there again that year? A. Yes, I went down there November 22 or 23 I believe.

Mr. Todarelli: The reason that I asked Mr. Hilly to read this is because the interpretation I get—

Mr. Hilly: Now, if your Honor pleases, I do not think it is relevant as to what interpretation Mr. Todarelli gets from that. 1904

Mr. Todarelli: I think the entire context ought to be read so that we won't get any wrong ideas here, that is all. I don't think Mr. Hilly means to be unfair.

The Court: He has read from the point where you asked him to read from, Mr. Todarelli.

Mr. Todarelli: Yes, I know, but I say it is quite apparent that refers—

Mr. Hilly: If your Honor pleases, I do not want any— 1905

Mr. Todarelli: All right. I will withdraw the objection, your Honor.

The Court: There won't be any interpolation by counsel there.

Q. So, at that time you didn't make any statement about going down on October 21st, did you? A. I don't remember that. I don't remember those statements, but I must have said them if they are there.

Q. I see. So you didn't say that you went down there.

*A. Krulewitch, for Deft., Cross.*

1806 at that time, did you? A. I couldn't remember. I don't think I was asked that question.

Q. You don't think you were asked that question? A. I am not sure.

Q. Well, you were asked this question:

"Q. Did you go down there again that year? A. Yes. I went there November 22 or 23 I believe."

A. That is correct.

Q. Well, the questions you were asked were:

"Q. With whom did you live there?"—talking about 325 East— "A. With Joyce.

1907 "Q. When did you next go to Florida? A. In October, which I explained to you, October 1st or September 30."

And then the very next question is:

"Q. Did you go down there again that year?" And your answer is: "Yes, I went down there November 22 or 23 I believe."

A. That is correct.

Q. So that you did not tell your attorney at that time that you went down in October, on October 21, 1941? A. Surely I told him that.

1908 Q. You didn't tell him it or did you? A. You mean I didn't answer that there?

Q. You didn't tell the Court and jury that when you were on trial in July of 1943, that fact? A. No.

Q. And you lied that time, isn't that correct, sir?

Mr. Todarelli: Your Honor, I object to that—

A. No.

Mr. Todarelli: —because I maintain here and now that these minutes are incorrect as far as that is concerned, and I can prove

*A. Krulewitch, for Best Cross.*

1909

The Court: Well, Mr. Todarelli—

Mr. Todarelli: I say that the minutes are incorrect, your Honor, and from the context it is quite apparent that they are incorrect and this is unfair cross-examination. I can prove it to your Honor if you will permit me to come up to the bench.

The Court: I do not know whether they are incorrect or not.

Mr. Todarelli: They must be incorrect, sir.

The Court: If they are and if the witness knows it he may say so.

Mr. Todarelli: I know, but the witness does not have the minutes before him. He can't interpret them there as I have them here. 1910

Mr. Hilly: Give him your copy of the minutes and I will examine him with your copy so that you will know what the question is.

The Court: Go ahead with the cross-examination.

Mr. Hilly: It is perfectly all right for them to cross-examine the Government witnesses. They were accurate then and they are inaccurate when you're contradicting this witness.

Mr. Todarelli: Well, now, that outburst is unnecessary. I suggest Mr. Hilly calm himself and we would all be much happier. 1911

The Court: I will do a little calming here myself if your lawyers do not stop your arguing. Go ahead, Mr. Hilly, with your cross-examination.

Q. Then the next question is:

"Q. In the meantime had you known Miss Winston and Miss Sookeriman went down there? A. Yes, they left on or about October 19 or 20 to go down there."

*A. Krulewitch, for Deft., Cross.*

1912 "Q. Did you go to the station with them? A. I did not.

"Q. Did you make any trips in your car to the station with them? A. I did not.

"Q. Did you know that they were going down? A. I did.

"Q. Did they tell you for what purposes they were going down? A. I was sure they were going down for the purposes of running this rooming house which she had rented.

1913 "Q. Had there been— A. Joyce was not going down to run the rooming house. Joyce was going down for her health." A. That is correct.

Q. Now Joyce when she went down there was going to help around the place, isn't that correct? A. Correct.

Q. That was your arrangement with Miss Sookerman. Is that right? A. No.

Q. Was that your arrangement with— A. Joyce.

Q. —Joyce? She would help around the place? A. That is right.

Q. Now, you sent money down there, is that correct? A. That is right.

1914 Mr. Hilly: (To Mr. Todarelli) Have you got those postal orders?

(Mr. Todarelli hands papers to Mr. Hilly.)

Q. And you say that all the money you sent down represented by these money orders was for Joyce, is that right? A. That is right.

Q. Now looking at Defendant's Exhibit X-2, that is a money order for \$60, is it not? A. That is right.

Q. And it is made payable to Pauline Hillson, is that correct? A. That is correct.

*A. Krulewitch, for Deft., Cross.*

Q. And there is nothing on the face of that, is there, to indicate that that money was to be given to Joyce? A. No. 1915

Q. Nothing on the face of it at all? A. No. There is two more money orders that we couldn't find, the Western Union couldn't find.

Q. Now, this next money order is for \$110, is that correct? A. That is correct.

Q. That is Defendant's Exhibit V-1? A. That is correct.

Q. And Defendant's Exhibit V-2 says "Give fifteen to Joyce"? A. That is correct. 1916

Q. It doesn't say give \$110 to Joyce, does it? A. No.

Q. It says, "Give \$15 to Joyce"? A. That is right.

Q. And this next money order is for \$25, is that right? A. That is right.

Q. And it is addressed to Pauline Hillson, is that right? A. That is right.

Q. And it has a message, "Phone you Friday night, Love"? A. That is right.

Q. It doesn't say you are going to phone Joyce, does it? A. She knows it meant—

Q. She knows it just by seeing that, is that right? A. That is correct. 1917

Q. But the message says, "Phone you Friday night," and it is addressed to Pauline? A. That is right, on account of the money order being addressed to Pauline.

Q. And that was due to the fact, as you said yesterday, that Joyce couldn't cash the money orders; is that right?

A. That is right.

Q. With respect to that money order that said "Give \$15 to Joyce," had you received a letter from Joyce, as you testified yesterday? A. I did.

*A. Krulwich, for Deft., Cross.*

1918 Q. You received a letter from her, is that right? A. That is right.

Q. And that letter was from Joyce? A. That is right.

Q. That is the reason why you sent this money order in the amount of \$110, is that right? A. No. The reason I sent the \$110 was before I left Miami I had borrowed \$50 from Pauline Hillson to give to Joyce, I had also borrowed \$45 from Pauline Hillson for my own expenses. And then when I got to New York I got a money order for \$110 and told her to keep the other \$15 additional.

Q. Now, let me ask you if you testified as follows on that very point, on page 241:

1919 "Q. By the way, did you send this message, 'Give something to Joyce, Love'? A. Give fifteen to Joyce, Love.

"Q. What was to be done with the rest? A. I understood when I sent that money that Joyce had owed Pauline Hillson \$95, \$50 which she had taken off her for her expenses for the first week down there, and I understood there was a few extra dollars she had bought some things with which Pauline Hillson laid out the money for, and there was \$95 due to Pauline Hillson and \$15 over." A. That is correct.

1920 Q. Now, then, you didn't borrow the money from Pauline Hillson as you testified here? A. It was the same thing.

Q. Oh, you mean it was the same thing? A. I told her to give her \$50 and I would send it to her as soon as I got to New York, and she took the \$50 from her.

Q. In your presence? A. Well, that I don't remember. I remember something about it but what it is I don't know.



*A. Krulewitch, for Deft., Cross.*

Q. Pardon me? A. I remember about it, but the exact 1921  
—whether I was standing there when she counted it out I  
don't know.

Q. And the next question that follows:

“Q. How did you get that word? A. By the telephone.

“Q. Did they call you up? A. Yes.

“Q. Who did? A. Joyce.”

So that you didn't receive a letter from Joyce, you got  
it by way of a telephone call; is that correct? A. What?

Q. That Joyce owed the \$50? A. No.

Q. Well, is this record here inaccurate, or the record 1922  
of the minutes of your first trial? A. There is some of  
it that is inaccurate because she didn't have a telephone at  
that time.

Q. Pardon me? A. She didn't have a telephone at  
that time.

Q. She didn't have a telephone at that time? A. No,  
she didn't have it until the 29th.

Q. Then, were you lying when you so testified here?  
A. I said that—can you repeat that question so I will get  
it straight?

Q. You said that Joyce borrowed \$50? A. That is cor- 1923  
rect.

Q. And it was borrowed in your presence, you told  
Pauline Hillson to give her \$50; is that right? A. That  
is correct.

Q. And that— A. But I didn't say it was given in my  
presence.

Q. All right, then, it was not given in your presence.  
You told Pauline Hillson to give her \$50. A. To give her  
\$50.

Q. And then you understood that Pauline Hillson had

*A. Kralewitch, for Deft., Cross.*

1924 laid out a few extra dollars, is that right? A. That is while I was there, \$45.

Q. \$45? A. Which I was responsible for.

Q. So that while you were there then Pauline Hillson laid out— A. \$95.

Q. —\$95? A. That is right.

Q. And the only reason why you didn't pay her then was because you didn't have the money? A. I did not have the cash with me.

Q. You did not have the cash with you? A. That is correct.

1925 Q. So that when you went back to New York City you knew then that you owed Pauline Hillson \$95? A. That is right.

Q. You knew that before you went from Miami? A. That is right.

Q. Then, when you testified on direct examination that you got a letter from Joyce telling you about the money, you never received such a letter; is that correct? A. I did receive a letter. What she told me in the letter was, in the event I sent any money orders to send it under the name of Pauline Hillson because she could get them cashed and she couldn't.

1926 Q. Didn't you testify on direct examination yesterday and I am reading from page 59 of your testimony of yesterday:

“Q. Did you have any correspondence with Joyce, did you have any telephone conversations with her? A. No, no telephone conversations. I sent her a money order—no, I think I received a letter first; I am not sure, but I received a letter first and then I sent her a money order for \$110.

*A. Krulewitch, for Deft., Cross.*

"Q. You sent whom? A. I sent the money order to Pauline on account of the letter that was sent to me, and if my memory is correct there was \$95 due Pauline of that money and \$15 I said to give to Joyce. I had given Joyce \$50 before I left, that I had practically borrowed from Pauline Hillson." A. That is correct. 1927

Q. Did you make that? A. That is correct.

Q. Now then when you testified on the first trial as follows, and I read now from page 242:

"Q. How did you get that word? A. By telephone.

"Q. Did they call you up? A. Yes.

"Q. Who did? A. Joyce. 1928

"Q. And told you she spent \$50 for the first week?

A. No, she had taken \$50 from Pauline Hillson.

"Q. That was all right with you? A. Oh, yes."

That testimony is not accurate, is it? A. Yes.

Q. That is accurate? A. That is similar to this.

Q. That is similar to this? A. That is right.

The Court: We will take our afternoon recess.

(Short recess.)

Q. I show you Government's Exhibit 13. That is in your handwriting, isn't it, sir (handing)? A. Yes.

Q. That is in your handwriting. Now, on October 18, 1941, you were in New York City, isn't that correct, sir? 1929

A. I believe so.

Q. Well, your signature appears on Government's Exhibit 21, doesn't it? A. Yes.

Q. The baggage receipt? A. Yes.

Q. And you checked that baggage, didn't you? A. Yes.

Q. And that baggage was checked on two tickets that were purchased on October 9 for use on October 21, isn't that correct? A. That is correct.

*A. Krulewitch, for Deft., Cross.*

1930 Q. Three tickets rather. And you were in New York City on October 21, 1941? A. Yes.

Q. And your signature appears on Government's Exhibit 23 in evidence? A. That's correct.

Q. The other baggage receipt? A. Yes.

Q. And on that day you purchased an additional round trip ticket, did you not, for use on November 25th? A. No.

Q. Well, the baggage that was checked through on October 21 was checked through on this ticket, isn't that right, sir? A. I believe so.

Q. And wasn't that ticket purchased on October 21st? A. If my memory is correct—I don't know exactly, but if my memory is correct that was purchased on October 9th also if my memory is correct. It might have been purchased on October 21st. I won't say no for sure, but if was it was purchased at one o'clock or two o'clock in the morning.

Q. On October 21st? A. The reason I am not sure is because I know I checked that baggage about three o'clock in the morning, so it must have been right before or earlier.

Q. And you knew, did you not, sir on October 9, 1941, you knew that Joyce and Pauline Hillson were going to Florida on October 21st? A. No, they were supposed to go on October 10th and they changed the date.

1932 Q. But the tickets they used were purchased on October 9th? A. That's correct.

Q. Well, then, on October 9th when they purchased those tickets, and at that time a round-trip ticket was purchased for you, you said— A. That is correct.

Q. You knew that that ticket was to be used on October 21st? A. Not that night. The time the ticket was purchased I don't know. I thought it was going to be used on the 10th.

*A. Krulwitch, for Deft., Cross.*

Q. But when they came back from the station they told you that the ticket was going to be used on the 21st? A. No, the reservation had not as yet been made. 1933

Q. Well, the reservation was made on October 9th— A. No.

Q. —for use on the 21st? A. No, I don't think so. I would remember that.

Q. Well, didn't you hear your attorney, Mr. Todarelli, say when he was cross examining Miss Josephine Sullivan ask me to stipulate that those three tickets were purchased on October 9th for use on October 21st? A. I don't remember that incident. I do remember that they were supposed to go earlier. 1934

Q. Yes, but my question is didn't you hear me stipulate that the tickets that were purchased on October 9th were to be used on October 21st? A. Well, then, I will agree to that also.

Q. Don't agree to it. The question is did you hear that? A. I don't know.

Q. You were in the courtroom at that time, weren't you, sir? A. That is right, but I heard so much that I forgot a lot of it.

Q. Now then, on October 9th, aren't you now prepared to admit that either on the 9th or 10th you knew that they were going to Florida on October 21st? A. On or about October 21st. 1935

Q. So you knew that on October 9th or 10th? A. That's right, not—I will say yes.

Q. Well, the reason why you are saying yes— A. I can't remember.

Q. —is because if you did not have a conversation with Joyce on the 9th you had it on the 10th? A. No, we had a conversation before the tickets were bought.

*A. Krulewitch, for Deft., Cross.*

1936 Q. Yes, but after you gave her the money— A. Oh, I can't remember that. I can't remember and pick out a specific date for any reason or anything.

Q. Well, you knew, did you not, sir, that the reservation was for October 21st? A. Later I knew that, yes, sir.

Q. When did you know that? A. Oh, that I knew, oh, a few days before they went I was definite sure of that, the reservation was for the 21st.

Q. Well, you knew on the 18th at least that it was for the 21st? A. Yes, October 18th I think it was for the 21st.

1937 Q. Because you checked the baggage through? A. That is right.

Q. And you had to show those tickets on that date? A. That is right, I knew even before that.

Q. So, you knew that before October 18th? A. That's right.

Q. Well now, would you say it was a week at least before October 18th that you knew that? A. No, a couple of days before.

Q. All right. What will we say, three, four or five days?

1938 A. Any time in between.

Q. So we would be safe in saying that between the 14th— A. And the 18th I knew.

Q. Now, let me ask you if you recall these questions being asked of you, and these questions like the others I have read were asked by your attorney who was examining you in the last trial:

“Q. Were you in New York City on October 19, 20 and 21? A. No.”



*A. Krulwich, for Deft., Cross.*

Now, do you remember that question and that answer on the trial on July of 1943? A. I don't remember it, but I must have said it. 1939

Q. So that then you lied at that time? A. It was no intent to lie.

Q. No intent to lie, but it was wrong? A. It might have been wrong.

Q. Well, it is wrong, is it not, sir, in view of the testimony here from you today, sir? A. I don't think anyone living can remember three or four years ago.

Q. I am not asking you that; I am asking you if it was wrong? A. Accordingly it must have been wrong. It must have been the 18th, 19th or 20th. 1940

Q. And this question: "Q. Where were you on October 19, 20 and 21? A. In Atlantic City.

Q. On business? A. Yes, sir."

A. That is correct. I must have said that.

Q. So that when you so testified at the last trial you testified wrong, isn't that correct? A. I made a mistake in the date. Instead of saying it the 19th, 20th and 21st, it should have been 18th, 19th and 20th.

Q. 18th, 19th and 20th? A. That is right.

Q. So that on the 18th then you weren't present in New York City? A. I was in New York. I left on the 18th. 1941

Q. What time did you leave? A. I checked baggage on the 18th. I left probably about two o'clock in the afternoon.

Q. For Atlantic City? A. For Atlantic City. I left my house in the morning. I took care of a few little things, checked the baggage.

Q. When did you check the baggage? A. On October 18th, I believe it was a Saturday, and I was going to At-

*A. Krulewitch, for Deft., Cross.*

1942 Atlantic City, and I must have checked the baggage around one or two o'clock, something like that, to the best of my memory.

Q. In the morning? A. No.

Q. In the afternoon? A. That is correct.

Q. Let me ask you if this question was asked and if you made this answer on the first trial in July of 1943:

“Q. When did you first know that Elizabeth Johnston was going to Florida, the date she testified about? A. On October 19 if I am not mistaken, I am almost sure it was a Sunday. I am not sure, but I am most sure it is a Sunday. I called up the house and I spoke to Joyce and I told her that I would be stuck in Atlantic City at least for two more days, or three more days. She said it is—I am—then said we are going down to Miami and I am trying to think of that particular day. I am almost sure it was a Sunday. It was a Sunday about I should judge—I will try to think of the time—it must have been around Sunday afternoon about one or two o'clock, and she told me then that she was going to leave.”

A. She told me on Sunday when I called up from Atlantic City that she intended to leave.

1944 Q. Well, that was the first time, was it, sir? A. What do you mean?

Q. That you knew that she was going to Florida on the 21st? A. Oh, no, I knew it earlier.

Q. Well, were you trying to give the Court and jury at that time the impression that when you called on Sunday, October 19, that was the first time that you knew that Joyce was going to Florida? A. Definitely not.

Q. You were not trying to give them that impression were you? A. I was never trying to mislead the Court.

*A. Krulewitch, for Deft., Cross.*

Q. Or the jury? A. Or the jury never.

1945

Q. Now, look at Government's Exhibit 18 in evidence, or Government's Exhibit 21, rather, in evidence. Is there any doubt in your mind that you filled that sheet of paper out? A. Right now, no.

Q. There is no doubt in your mind about that? A. Only there is an erasure on there, but there is no doubt I wrote that slip.

Q. And that is your signature? A. That is correct.

Q. That is your signature? A. That is correct.

Q. So there is no doubt in your mind with respect to that? A. That is correct.

1946

Q. Now, at the last trial were you asked these questions:

"Q. Look at Government's Exhibit 18 for identification"—it was then known as Government's Exhibit 18 for identification—

Mr. Todarelli: Page, Mr. Hilly?

Mr. Hilly: 312.

Q. —"That is your signature, isn't it? A. Yes, that is my signature. I think so. Wait a minute. I want to be sure. I don't know whether it is or not. I won't be sure on that.

1947

"Q. 145 Broadway, is that your office? A. Yes.

"Q. Look at it again and see if that is your signature? A. It don't look like my signature.

"Q. As a matter of fact, on October 18, 1941, you filled this form out, didn't you? A. No, sir. I am almost sure I did not."

A. I gave those answers.

Q. You gave those answers? A. That is correct.

Q. And weren't you at the time you gave those answers

*A. Krulewitch, for Deft., Cross.*

1948 at that time attempting to mislead the Court and jury and trying to convince them that you had nothing whatsoever to do with the transportation of Joyce Sorrentino in interstate commerce? A. Definitely not, I wasn't sure. I didn't remember the incident of checking the baggage three or four days ahead of time.

Q. You mean to say, sir, a business man such as you are that you can't recognize your own signature when you see it? A. There was an erasure on there and I hesitated. I first said yes and then I wasn't sure.

Q. Yes. You said yes. A. The reason I wasn't sure—

1949 Q. And then you saw the date, sir, and you probably realized, did you not, what an admission such as that would mean? A. I was very happy to admit that I signed this here because I checked this baggage on the 18th. It came to my memory, which was refreshed later.

Q. Your memory was refreshed later? A. Yes.

Q. But looking at it on that day when you testified in this court your memory was not refreshed? A. The reason why it was not—

Q. Was your memory refreshed on the day? A. No, that was three years after, and I wasn't sure, but now I am sure I did write that.

1950 Q. And, of course, the fact that the Government called the handwriting expert in this trial and was prepared to prove that that was your signature, did that have anything to do with the refreshing of your recollection? A. I will answer it this way—

Q. I asked you, sir, did that have anything to do with the refreshing of your recollection? A. Definitely not. I admitted all signatures.

Q. You mean you admitted it in this trial? A. Correct.

*A. Krulewitch, for Deft., Cross.*

Q. Now, you say, sir, that when you visited the witness Sorrentino's home up State the first time, you lived in the hotel up there, is that correct? A. That is correct. 1951

Q. And thereafter you were welcomed into the home as a son, is that right? A. That is correct.

Q. Well, didn't Mrs. Sorrentino's mother at that time think that you and Joyce were married? A. No.

Q. She didn't think that? A. No.

Q. Didn't Joyce tell her that you were married? A. Joyce told her, wrote her a letter from Virginia Beach while she was there and told her she was married to me and I was with her. But that letter that she wrote I knew nothing of. 1952

Q. Well, at that time then— A. This was much later. This was in July when she done that, or August, when she went to Virgina Beach.

Q. Let me ask you if this question was asked you, page 271? "Q. Did you tell the mother that you were married to her? A. No, sir.

"Did you introduce her as your wife? A. Yes.

"Q. Did you introduce her mother to any of these people? A. Yes, sir.

"Q. By what name did you introduce the mother? A. I introduced the mother as the mother to two people and she wrote a letter calling me her son. 1953

"Q. And you told these people you were married to Joyce? A. That is right.

"Q. And they never said anything to apprise the mother that you were not? A. They thought I was and the mother thought I was because Joyce told me—told her mother we were married."

A. That is true.



*A. Krulwich, for Deft., Cross.*

1954

Q. So that the mother did think that you were married?  
A. Joyce had told her mother that we were married and her mother thought we were married.

Q. And you never told the mother that you were married? A. I didn't say either yes or no.

Q. Did you testify yesterday on direct examination that you gave money to the family? A. No.

Q. Only groceries? A. Groceries, food, and that is all.

Q. Now you say that on October 21 you checked the baggage, is that correct, sir? A. That is correct.

1955

Q. And you checked the baggage in the morning, early in the morning; is that right? A. That is correct.

Q. That baggage was checked at 3:30 a. m., is that correct? A. That is correct. That is what I said.

Q. Then you testified yesterday you went up to the apartment at 325 East 77th Street, is that right? Is that right, sir? A. Yes, I believe so.

Q. Well, yesterday you said you did? A. Yes.

Q. So that is a fact; is that right? A. Yes.

Q. And when you got up there Joyce and Pauline were there, isn't that right? A. They were not there.

Q. They were not there? A. They were not there.

1956

Q. Was there any note there? A. No.

Q. You didn't know where they were? A. I knew they were on their way to Florida.

Q. And when had they left for Florida? A. I wasn't there, I don't know.

Q. You don't know. Well you know, do you not, sir, that the tickets that were purchased on October 9th for use on the 21st called for the Champion; is that right? A. That is correct.

Q. And there were specific seat numbers assigned on a



*A. Krulewitch, for Deft., Cross.*

three of these tickets, isn't that right, sir? A. That is correct. 1957

Q. And the Champion, according to this book here, Defendant's Exhibit II, leaves New York at 3:55 p. m., isn't that right? A. That is correct.

Q. So that the tickets for use on the Champion on October 21st would call for people leaving on that train at about five minutes to four in the afternoon of the 21st; isn't that correct? A. Yes.

Q. But you tell us when you got home on the morning of the 21st—now, that was in the morning, at or about 2:30, is that correct, that you checked the baggage at about 3:30; 1958  
it wouldn't take you more than an hour to go up to 325 East 77th Street? A. No. That was checked at 3:30, so probably I got there about 4:30.

Q. So that you got there at 4:30 in the morning, that is a. m. as distinguished from p. m.? A. Yes.

Q. And that is approximately 12 hours before the Champion was to leave? A. Yes.

Q. And you say that at that time when you didn't find them in the house you didn't worry because you knew they were on their way to Florida at that time? A. I believed so. 1959

Q. So that there was no one in the house that morning, is that right? A. That is right.

Q. And you did not leave the house that morning? A. Yes.

Q. With Joyce and Pauline? A. I left the house myself to go to the Doehler Furniture Company.

Q. Yes; but did you leave the house that morning with Joyce and Pauline? A. No.

Q. And you persist in that statement; despite the fact

*A. Krulewitch, for Deft., Cross.*

1960 that you heard the testimony of the witness Dolan. A. Well—

Q. Do you persist in that? I am asking you that, sir.

A. Yes.

Q. Now, then, you say that on October 21st you went to the Doehler Furniture Company? A. That is right.

Q. And then you went to Baltimore? A. That is right.

Q. Now, we are still on October 21st; isn't that correct? A. That is right.

1961 Q. Now, when you got on the train to go to Baltimore you found, did you not, that you could not use the round trip ticket that had been purchased for you; is that correct? A. That is right.

Q. You had to buy a separate ticket or a separate train fare from New York to Baltimore, is that right? A. That is right.

Q. And then you got down there and you purchased the furniture, is that right? A. That is right.

Q. And we are still on October 21st, are we not? A. We are.

1962 Q. Now isn't it a fact, Mr. Witness, that on October 21st before noon, in the morning, you and the witness Sorrentino and the defendant Sookerman left your apartment at 325 East 77th Street and went to Pennsylvania Station? A. That is not true.

Q. And isn't it a further fact that all three of you then took a train from Pennsylvania Station to Baltimore? A. That is not true.

Q. And isn't it a further fact that in Baltimore on October 21st you purchased furniture from your uncle? A. I did purchase furniture from my uncle.

*A. Krulewitch, for Deft., Cross.*

Q. And isn't it a further fact, sir, that when your uncle asked you to stay for supper you told him you could not because you had to take a train? A. I did not say that, but I did try to make the train, I didn't say it to him, but I did try to make the train. 1963

Q. And you made that statement despite the testimony in this court of your uncle? A. What do you mean?

Q. That your uncle testified in this court here that he asked you to stay for supper and you said you could not because you had to catch a train. A. No, I don't remember him saying that.

Q. Well, let me refresh your recollection on that point, sir. This is your uncle's testimony, Mr. Kay, when he was being examined by Mr. Todarelli, and the question is, and I am reading from page— 1964

Mr. Todarelli: I don't have the testimony, Mr. Hilly.

Q. —“Q. You said on direct examination that Mr. Kay got there about 6:30 or 7? A. Yes, sir. I was ready to go home, I remember, going to dinner, and, in fact, I wanted him to go along and have dinner with me.

“Q. And what did he say? A. He said that he was—that he had to make a train or something, that he couldn't very well make it then.” 1965

Did you hear that testimony? A. That is possible, but I don't remember—

Q. Isn't it a fact that that is the reason why you couldn't stay for dinner with your uncle, that you did have to make a train? A. I didn't. I did not,—

Q. Wasn't the train that you then made, sir, the Champion, which was leaving Baltimore at 7:13 that night? A. No.

*A. Krulewitch, for Deft., Cross.*

1966

Q. Didn't you board that train? A. No.

Q. —with Joyce and Pauline? A. No.

Q. Now you told this jury on direct examination that you arrived in Miami on October 23rd. A. The morning I believe, 7 o'clock, or 12 o'clock at night, either one of them.

Q. Don't you recall, sir, that you arrived in Miami on October 22nd at about 4:55 p. m.? A. No, sir.

Q. You remember that you testified on direct examination that you saw baggage delivered in? A. I did.

Q. And that baggage that was delivered there was Joyce's baggage and was your baggage, is that correct? A.

1967

Not my baggage, no.

Q. Whose baggage was it? A. My baggage came later.

Q. When did your baggage come, sir? A. Oh, I don't remember. I knew it was the—I know it was the 22nd or the 23rd; I don't remember the date. But I will say my baggage came while the people were fixing up the linoleum on the floor.

Q. All right. Now on Government's Exhibit 23, that is the exhibit on which you checked your baggage through; isn't that correct, sir? A. That is correct.

1968

Q. And your baggage was assigned check No. 559133 and 536876, 77 and 78; isn't that correct? A. It is on there, yes.

Q. Isn't that the check— A. I wouldn't know. It is on there. Would I remember those numbers?

Q. Now, look at Government's Exhibit 8. A. I am directing your attention to Government's Exhibit 8-C. Yes.

Q. Which is the baggage receipt of the Red Top Cab

*A. Krulewitch, for Deft., Cross.*

and Baggage Company of four pieces of baggage? A. Can I see this? 1969

Q. Yes, I will show it to you. Which bear the numbers 536877, 78, 76, and 559133. A. That is on here, yes.

Q. That is the same there. And that was the baggage that was delivered by the witness Hames, H-a-m-e-s; do you see his name up there? A. Yes.

Q. And you remember that Mr. Hames testified and identified you from this witness stand as the man who was present at the time he delivered the baggage? A. Yes. He did.

Q. And that baggage, sir, was delivered to 66 Northwest 5th Street on October 22nd? A. Can I see that? 1970

Q. Yes, you can look at it. Don't you recall further, while we are on the subject, that you signed the name A. Hillison that appears there? A. I did. Can I see this?

Q. And you signed the name A. Hillson that appears on these other three pieces? A. Yes.

Mr. Todarelli: Let him see that, Mr. Hilly. He has to see it.

Mr. Hilly: Oh, sure. I am sorry, Mr. Todarelli.

The Witness: Could I see the other two?

Q. Certainly you can see them, sir. Here is the first one I showed you, sir, the one with the witness Hames' name on it? A. Yes. 1971

Q. Now, that refreshes your recollection, does it not, sir, that you were in Miami, Florida, on October 22nd; isn't that correct? A. No.

Q. It still does not refresh your recollection? A. No.

Q. You mean, despite this evidence, you are still going to sit on that witness stand and lie; is that correct? A. That doesn't show when it was delivered.

*A. Krulewitch, for Deft., Cross.*

1972 Q. Doesn't it bear the date October 22nd, 1941? A. Yes. Yes. It says the time the truckman got it.

Q. Doesn't it show the time as 9:30 p. m. on that day?

A. The truckman got it. That doesn't show it was delivered. Show me the date where it was delivered.

Q. Let me read the testimony of the witness Hames. A. I would want to hear that.

Q. Pardon me? A. I would want to hear that, where he said it was delivered on the 22nd.

Q. Yes, sir. I will read that to you.

Mr. Hilly: I haven't finished with them yet, Mr. Todarelli, but I will give them to you, sir.

1973

Q. I am reading from page 225, Hames' direct examination:

"Q. Mr. Hames, in October of 1941 by whom were you employed? A. Red Top Bag & Baggage Company.

"Q. And where were you employed? A. Miami, Florida.

"Q. Now, let me direct your attention to this paper here and ask you if—

"Mr. Todarelli: May I look at the paper?

"The Court: I beg pardon?

1974

"Mr. Todarelli: May I look at the paper, your Honor?

"The Court: Certainly.

"Mr. Hilly: I am sorry (handing to Mr. Todarelli).

"Mr. Todarelli: Thank you.

"Q. I ask you to look at this sheet of paper and ask you if you can tell me what that is? A. It is a baggage receipt from Red Top Baggage Company.



*A. Krulewitch, for Deft., Cross.*

"Q. And does that bear your signature? A. That is my name, but it is not my signature. 1975

"Q. It is not your signature? A. No.

"Q. Now, on October 22, 1941 did you deliver any baggage to a hotel known as the El Chico Hotel? A. I did.

"Q. And that hotel was located at 66 Northwest 5th Street, Miami, Florida, is that right? A. That is right.

"Q. And looking at Government's Exhibit 3 in evidence, is that the El Chico Hotel? A. It is."

Now, doesn't that refresh your recollection, Mr. Kay? A. No.

Q. That on October 22nd, 1941, you not only were in Miami, Florida, but signed Government's Exhibit 8-A, B and C? A. I signed them, but I have no recollection of that being delivered on October 22nd. 1976

Q. And you did not sign the name of Alvin Kay, did you, sir? A. I did not.

Q. That is another name that you just adopted, isn't that right— A. No.

Q. —on the spur of the moment? A. When the expressman came in he said, "This is for Hillson".

Q. On Government's Exhibit 8-B, 8-A, B or C— A. You see, this is 9:30 p. m., that is what I can't understand. 1977

Q. Let me ask you this question: On Government's Exhibit 8-A, B or C, can you show me where the name of Hillson appears, except in the three places where you put the name? A. That is right.

Q. That is the only place, isn't that right? A. That is right.

Mr. Todarelli: May I see those now?

Mr. Hilly: Yes, Mr. Todarelli, you can (handing).

Mr. Clerk, have you got the original copy in the file of this exhibit, sir (handing)?

(Clerk hands to Mr. Hilly.)

*A. Krulewitch, for Deft., Cross.*

1978 Q. Look at this piece of paper, sir, I ask you, is this your signature? A. It is.

Q. That is your signature? A. Yes.

Q. And you read this affidavit over before you signed it, sir? A. May I see it?

Q. Yes, you can read it now if you wish? A. Yes.

Q. You read it over, is that right? A. Yes.

Mr. Hilly: Would you mark it, please, Mr. Clerk, for identification. Oh, it is deemed to be marked.

(Government's Exhibit 37 deemed marked for identification.)

1979 Q. And on page 4 of Government's Exhibit 37 for identification appears this: "Statement made by John Dolan, doorman at 325 East 77th Street"—

Mr. Todarelli: I object to reading from something not in evidence. The way to impeach a witness from a paper is to ask him. Did you say this, or did you say that?

Mr. Hilly: I will ask him that. Very well.

The Court: I supposed this is the original of something that is in evidence.

Mr. Todarelli: No, your Honor.

1980 Mr. Hilly: It is the original—now, that is not entirely correct, Mr. Todarelli. Your Honor is correct in that statement; this is the original of something that is in evidence but something that has not appeared before the jury. This is the original of Government's Exhibit 4 on that other matter that was taken up on the recess during the first week of the trial.

The Court: Then it is not in evidence in this.

*A. Krulewitch, for Defl., Cross.*

Mr. Hilly: It is not in evidence in this case.

1981

Mr. Todarelli: That is what I mean.

The Court: He may ask him if he made those statements.

Q. Did you obtain a signed statement from John Dolan?

A. I did.

Q. And that John Dolan was the doorman at 325 East 77th Street? A. Yes.

Q. And that statement was dated December 10, 1941?

A. I believe so, to the best of my memory.

Q. Let us look at it so that there won't be any doubt in your mind, sir. It is dated December 10, 19— A. Yes.

1982

Q. And did John Dolan in this signed statement state to you as follows: "On December 6, 1941, on or about 6:30 a. m., I was dressed in uniform to come on duty for work at the apartment building at 325 East 77th Street when I was stopped by about seven men who told me they were from the Federal Bureau of Investigation"—

Mr. Todarelli: I object, your Honor. I don't think that this is any attack whatever upon anything that the witness has said. At least I don't remember any testimony that he has thus far given about John Dolan; I don't remember any testimony that he has given about signing such an affidavit. And I maintain that it is not an attack on his credibility at all.

1983

The Court: Well, is this document from which you are reading a part of the court records?

Mr. Hilly: Yes, your Honor, it is.

The Court: All right. You may ask him.

Mr. Todarelli: My objection is noted, your Honor!

The Court: Oh, certainly.

*A. Krulewitch, for Deft., Cross.*

1984 Q. Did John Dolan tell you that? A. Yes.

Q. "They asked me did I have the passkey for apartment 1-A, and I asked them why, and they told me they wanted to use it to get into Mr. Kay's apartment."

Q. Did John Dolan tell you that, sir? A. Yes.

Q. "I told them that I don't think I had a right to open the door." Did he tell you that, sir? A. That is correct.

Q. "They then took me down to the basement and made all kinds of threats against me, and not knowing what to do I felt it best for my own safety to open the door for them of apartment 1-A in 325 East 77th Street, New York City."

1985 Did Mr. Dolan tell you that, sir? A. He told me that.

Q. "I then walked away after opening the door, and if I had not been threatened with violence by these men and also the door of the apartment being threatened with violence I would never have opened the door."

Did Mr. Dolan tell you that, sir? A. That is right.

Q. "About 15 minutes later they took Mr. Kay out of the apartment, put him in a car that was standing in front of the door, and I did not see him again until today."

Did Mr. Dolan tell you that, sir? A. About 15 minutes later? I believe he did. What is that statement he said.

1986 Q. He not only said, sir, but he signed it. A. That is correct.

Q. "After taking Mr. Kay out of the apartment the Federal Bureau of Investigation agents remained in the apartment until about 2 p. m. the day of December 6, 1941."

A. That is correct.

Q. "I am making this statement to Mr. Kay voluntarily with my own words and what I saw with my own eyes."

A. Correct.

*A. Krulewitch, for Deft., Cross.*

Q. And then Mr. Dolan signed that statement, is that correct? A. That is correct. 1987

Q. Now, in this same paper, in this same affidavit did you state as follows, and this precedes what I have just read to you, sir, and is the last paragraph on page 3:

"I have endeavored to obtain an affidavit from John Dolan who was the former hallman in the apartment at 325 East 77th Street, New York City, but have been unable to locate him, but have been informed that he is in the armed forces of the United States and his whereabouts is unknown. Therefore, I make this statement from a conversation which I had with the said John Dolan on the 10th day of December, 1941, at the premises in question."

1988

Did you say that, sir? A. I did.

Q. "This conversation was reduced to writing and signed by the said John Dolan, but unfortunately I have either lost, mislaid, or the same has been seized, but in any event I have not the original written statement and make this statement from a copy now in my possession."

Did you say that, sir? A. That is right.

Q. And the reason, sir, you stated that was because you did not think that anyone would be able to locate Mr. Dolan, isn't that correct, sir? A. Why not? 1989

Q. And weren't you doing the same thing then when you submitted this statement as you did when you wrote out Government's Exhibit 13 for the witness Olela? A. They are both—they are both right.

Q. They are both right? A. Right.

Q. Now, you remember Special Agent Rumans of the Federal Bureau of Investigation, do you not, sir? A. I do.



*A. Krulewitch, for Deft., Cross.*

1990

Q. And do you remember that on January 27, 1942, he visited your apartment at 325 East 77th Street? A. I do.

Q. And do you remember you had a conversation with him at that time? Is that correct, sir? A. That is correct.

Q. And did you tell him at that time, sir, that you were going to Miami and would try to straighten it out if you could, and if not you would blow the top off in Miami? A. No.

Q. Did you tell that to Special Agent Rumans at that time? A. No. Straighten what out?

1991

Q. With respect to the charge that was pending in Miami, did you tell Special Agent Rumans that you were going down there to Miami and you would try to straighten it out and if not you would blow the top off Miami? A. Never. I had already been there and back. I retained counsel.

Q. And did you tell Special Agent Rumans at that time— A. On January 27th?

Q. Yes, January 27, 1942? A. Definitely not. He just came to deliver some papers that he had taken unlawfully and returned them to me.

1992

Q. Did you tell Special Agent Rumans at that time that you knew the girls had paid \$300 to operate as prostitutes down there? A. Definitely not.

Q. And when you were asked by Special Agent Rumans which girl you did not mention any names? A. Never had that conversation with him.

Q. And didn't Special Agent Rumans ask you to tell him what happened and that he would relay the facts to the United States Attorney's office, and that if you would tell the facts about others the United States Attorney's office might be able to do something for you? Did you have that conversation with him? A. Definitely not.



*A. Krulewitch, for Deft., Cross.*

Q. And didn't you tell Special Agent Rumans no, that you were afraid to do that, because you thought the FBI might be in with the Police Department down there? Did you tell that to Special Agent Rumans? A. No. 1993

Q. You used to advertise, did you not, sir, in the New York Journal-American for waitresses for your cider stubes? A. I did.

Q. And your advertisement was dropped by the New York Journal-American, isn't that correct?

Mr. Todarelli: No, I object to that, your Honor.

The Court: What is the purpose of this?

Mr. Hilly: Pardon me, your Honor? 1994

The Court: What is the purpose of this?

Mr. Hilly: To show—I prefer, if your Honor pleases, to make the statement at the bench, as I do not want to—

The Court: All right. Come up.

(Discussion at the bench, not in the hearing of the jury.)

The Court: We will recess now until tomorrow morning at 10:30.

(Adjourned to April 24, 1947, at 10:30 a. m.)

1995

New York, April 24, 1947;  
10:30 o'clock a. m.

Trial resumed.

ALVIN KRULEWITCH, resumed the stand.

Cross Examination continued by Mr. Hilly:

Q. I think on direct examination, Mr. Krulewitch, you stated that no one spoke to you about repairs for your

*i. Krulwich, for Deft., Cross.*

1996 car while you were in Chicago, that is, in June of 1939 when you went there with Joyce? A. I don't remember that.

Q. Well then, let me ask you the question, did anyone speak to you about repairs to your car, for your car, while you were in Chicago in June of '39? A. I might have had a water pump fixed in Chicago, I might have, but that is when I got to Chicago.

Q. And isn't it a fact that you got money from New York for that bill? A. No, sir.

Q. Nobody sent any money out? A. No, sir.

1997 Q. But you did have a water pump to be fixed in Chicago, is that correct? A. That is possible. I don't remember the incident.

Q. Let me ask you if these questions were asked you on July 2, 1943:

Q. Did you receive any money from Rose Sookerman or Joyce while you were in Chicago?"

Mr. Hilly: I am reading from page 5, Mr. Todarelli.

Mr. Todarelli: Page 5?

Mr. Hilly: Page 5 of Government's Exhibit 31.

Q. And your answer is:

1998 "If I am not mistaken I think I am not sure, but I don't know whether I received it or not, but I do remember I might have made the call at the same time. That's going back four years ago"—

Mr. Todarelli: "at some time", isn't it?

Mr. Hilly: "at the same time."

Mr. Todarelli: Here in the record it says "some time".

Q. "That's going back four years ago and it is kind of hard for me to remember the exact circumstances, but if I

*A: Krulwitch, for Deft., Cross.*

and not mistaken they might—she might have sent me some money to come back to New York, cash. 1999

“Q. About \$35?”

Mr. Todarelli: 35.

Mr. Hilly: “About \$35.”

Mr. Todarelli: Your Honor, there are three mistakes that I find in the record of the first trial already.

The Court: I do not understand he is reading from the record.

Mr. Hilly: I am not reading from the record, your Honor. 2000

Mr. Todarelli: Mr. Hilly will agree with me that at the first trial Mr. Wallace read from this paper that Mr. Hilly holds.

Mr. Hilly: I presume he did.

Mr. Todarelli: And presumably it was transcribed by the reporter here, and in one paragraph there are three errors.

Q. “Q. About 25? A. It might have been late at night, and I was leaving that night.

“Q. Something wrong with your car? A. No. It might have been. I don’t know, oh, yes. It just came to my attention. There might have been a water pump or something if I can remember right. I don’t know exactly. There might have been.” 2001

Doesn’t that refresh your recollection that you put a call through to New York and got \$35? A. I don’t remember that.

Q. Then instead of saying you did not put the call through, your testimony now is that you don’t remember?

*A. Krulwicht; for Deft., Cross*

2002 A. I can't remember that. It is eight years ago you are speaking of.

Q. Oh, then, you are not prepared to state now, sir—

A. I am not prepared to say yes or no because I am not—I can't remember that incident at all.

Q. So that you now want to change your direct testimony from a statement that you never received any money to one that you cannot remember? A. Listen, I never said I never did. I never said I did. I can't remember that incident.

Q. On direct examination you testified as follows:

2003 "Q. You drove out there in the car? A. That is right.

"Q. Did you telephone Joyce while you were in Chicago? A. No, sir.

"Q. Did you telephone Betty where you were in Chicago? A. No, sir.

"Q. Did you ask anybody for \$25 to make repairs to your car? A. No, sir."

Q. Now, on direct examination you said no, that you didn't. You didn't tell us at that time that you couldn't remember. A. I couldn't have telephone Joyce because Joyce was with me.

2004

Q. Well, then, this statement here, the questions and answers asked you here are inaccurate, is that correct? A. It must be inaccurate, because Joyce was with me.

Q. Then your testimony now, as I understand it, sir, is that you didn't make a phone call? A. I don't remember making it.

Q. Would you please tell me what your testimony is, whether you made a phone call or whether you didn't make a phone call? A. I cannot remember.

*A. Krulwich, for Deft., Cross.*

Q. Then you want to change— A. I don't want to change. 2005  
I do remember Joyce was with me. Now, if Joyce was with me I couldn't have telephoned to her.

Q. Did you telephone Betty while you were in Chicago?

A. That I don't remember.

Q. When you were asked that question on direct examination, "Did you telephone Betty while you were in Chicago?", your answer was, "No, sir." A. But I don't remember.

Q. You didn't tell us at that time, did you, sir? A. Well, I don't remember. But at that time I remember Joyce writing to Betty. 2006

Q. My question, sir, is, did you tell us, when you testified on direct examination when you were asked— A. I might have said yes or no, I don't know.

Q. I am telling you that your testimony is that you testified on direct examination that you did not telephone Betty. Now, is that testimony true or is it untrue? A. It is true to this extent, I will say to the best of my memory I did not.

Q. You did not? A. To the best of my memory.

Q. Now, I think you testified yesterday that in the first 2007  
trial you did not tell the Court and jury about going down to Florida between the first visit in the early part of October and the visit in November because the question was not asked you; is that correct?

Mr. Todarelli: I submit, your Honor, that is not so, and I submit that the record does not bear that out, your Honor.

The Court: Well, I don't remember what the record says. If the witness knows, he may answer.

*A. Krulewitch, for Deft., Cross.*

2008

Q. On cross examination yesterday didn't I show you testimony in the record of the first trial wherein you stated that you went to Florida in the latter part of September or the early part of October, isn't that correct, sir? A. That is correct.

Q. You remember I also showed you testimony where you said that the next time you went to Florida was in November? A. No. Those minutes were incorrect.

Q. Those minutes were incorrect? A. From what you are saying.

2009

Q. From what I am ~~saying~~ or from what I read yesterday? A. From what you are saying.

Q. Let us— A. And also from what you read.

Q. Oh, from what I read? A. Also. Because I was not at Park Avenue when I went to Florida.

Q. As a matter of fact, you weren't at Atlantic City either, were you, sir, when you filed an application for the lease at 325 East 77th Street, were you? You hadn't been in Atlantic City when you filed the application for the lease at 325 East 77th Street, sir, were you? A. I couldn't have been.

2010

Q. Pardon me? A. No.

Q. But at the time you filed the application you stated that you had been in Atlantic City for the past three years?

A. I don't understand that.

Q. When you filed the application for your lease at 325 East 77th Street did you not say at that time that you had been in Atlantic City for the past three years? A. You mean on the application?

Q. Yes. A. That I don't remember. I might have.

Q. Let me show it to you and that will refresh your recollection. A. Surely.



*A. Krulewitch, for Deft., Cross.*

Q. I am in error. At the time you filed the application for the lease at 325 East 77th Street you said you were living at 10 Park Avenue, isn't that correct? A. It says previous address. 2011.

Q. Yes, it says previous address. 10 Park Avenue. A. That is correct.

Q. Hadn't you been living at 610 West 174th Street? A. That is one—they have four previous addresses here I believe. Yes, they have previous landlord, previous landlord.

Q. They have not. That is present landlord, isn't it?

A. Present landlord, previous landlord. 2012

Q. It says present landlord? A. Yes.

Q. And it says previous address, isn't that correct? A. Will you let me answer that?

Q. Yes, answer it; but I am asking you what that says on that application. A. The present landlord I gave was Coe Estate which was my present landlord. The previous address I gave was 10 Park Avenue which was my previous landlord.

Q. Hadn't you been living at 610 West 174th? A. That is right.

Q. You didn't put that— A. It certainly is. 2013

Q. It certainly isn't.

Mr. Todarelli: I don't think Mr. Hilly ought to argue with the witness.

Mr. Hilly: I won't argue. I am sorry.

Q. The address 610 West 174th Street is this address from you? A. Yes.

Q. But alongside of that appears the name of Ben Gordon which is designated as a reference; isn't that right? A. That is right. In other words, Mr. Hilly, when I gave

*A. Krulewitch, for Deft., Cross.*

2014 this Coe Estate as my present landlord they were my present landlord. And previous were 10 Park Avenue.

Q. Previous was 610 West 174th? A. That is not so.

Q. That is not so? A. No. Previous—also, previous, previous I think means “before”.

Q. That is correct. We agree on that. A. And before I did live at 10 Park Avenue.

Q. But before you moved to 325 East 77th Street and after you lived at 10 Park Avenue you lived at 610 West 174th Street? A. That is correct.

Q. You didn't put that down? A. I didn't put that

2015 in.

Q. Let me ask you if these questions were asked of you on July 2, 1943 and if you gave these answers:

“Q.” —and I am reading from page 15—“You are sure you didn't get the key from Mrs. Blumberg?”

Mr. Todarelli: Did Mr. Hilly say July 2, 1943?

Mr. Hilly: Yes, that is correct.

Mr. Todarelli: That is the statement before Mr. Wallace?

Mr. Hilly: That is right.

2016

Mr. Todarelli: Of course I don't have the statement, although Mr. Hilly said that he would let me have a copy of it.

Mr. Hilly: I did not say that. I said I will give him this as soon as I finish.

The Court: Go ahead.

Q. “Q. You are sure you didn't get the key from Mrs. Blumberg? A. I got the key from Mrs. Blumberg on the 2nd of October. I never saw Mrs. Blumberg until the 25th of November I believe.

*A. Krulewitch, for Deft., Cross.*

"Q. Then you were not in Florida from around the early part of October until some time in November? A. I am almost sure that is the right time. 2017

"Q. You went down there some time in November, the latter part? A. That's right. I am positive.

"Q. And you were down there in between? A. I am positive."

Did you make those answers to Mr. Wallace? A. No, sir, I did not. Because I received the key from Mrs. Blumberg's mother.

Q. Did you answer this question then: "You went down there some time in November, the latter part? A. That's right. I am positive. 2018

"Q. And you were not down there in between? A. I am positive."

A. I never said that.

Q. Inaccurate? A. That is inaccurate. The answer is.

Q. The answer is? A. That is right.

Q. You made some other answer? A. I never denied that I was there between the 20th and 27th of October. I have never said no. I did go down.

Q. You have never said no? A. No. I did go down. 2019

Q. Let me ask you if this question was asked of you by Mr. Wallace on July 2, 1943—I am reading from page 13:

"Q. About October 20th you returned to Florida? A. No."

Did you make that answer to Mr. Wallace? A. I don't remember that answer at all.

Q. You don't remember? A. I don't even remember that question.

Q. You don't even remember that question? A. No.

*A. Krulwich, for Deft., Cross.*

2020. Q. That was something that Mr. Wallace put into this statement? A. No, I won't say that he purposely put it in, but I don't think he got the answer right.

Q. You don't think he got the answer right or you don't think the stenographer got it right? A. What?

Q. You don't think the stenographer got it right? A. Listen, if you knew the circumstances under which that statement was given, a copy was promised to me; when it wasn't given to me I refused to sign it; I then and there denied everything at the time.

Q. You were then represented by Mr. Wilson, is that correct? A. That is right.

2021. Q. He was present during the statement? A. But he didn't see what they put in the statement.

Q. And Mr. Zelenko, another attorney, was present? A. He didn't see what they put in the statement.

Q. He was present during the entire time? A. That is right.

Q. Both of these men were present during the time that you were being questioned? A. That is right.

Q. You said yesterday that you did not live with Joyce prior to your going to Chicago, is that correct? A. You mean—

2022. Q. I am talking now about June of 1939. A. Well, I don't know how you would call it. I said I did visit her and I did sleep with her and I was intimate with her. Now, what would you call that?

Q. You said that? A. Yes.

Q. And I believe you testified that you were not intimate with her or you didn't live with her at 156th Street prior to your going to Chicago? A. That is correct.

Q. We are correct on that? A. That is right.

*A. Krulewitch, for Deft., Cross.*

Q. From page 323, during your first trial, by your attorney: 2023

Q. When you were questioned by Mr. Wallace as to the statements which you made before him on July 2nd as to living with Elizabeth Johnston or Joyce Winston at the 156th address you said in reply to a question that you wished to explain. A. Yes, I do.

Q. What was the situation? A. I tried to explain to Mr. Wallace that I took Joyce out for about a week, I will not say a week; say four or five days, before I asked her to go up to 156th Street to stay.

Q. Did you make that answer? A. That meant at 515 West— 2024

The Court: That is not the question. The question is, did you make that answer?

The Witness: I did.

Q. And then that meant that you took her up to 515? A. That is right.

Q. And you were intimate with her there and lived with her? A. No. I asked her to stay at 515.

Q. Did she stay? A. There was no furniture there to stay.

Q. Wasn't that rather silly, then, to ask her to stay in an unfurnished apartment? A. No, it wasn't silly to offer a girl an apartment. 2025

Q. Then you mean this testimony that appears in this record here now means that about four or five days after you met her you asked her to go up and look at an apartment at 156th? A. I might have said four or five days. It might have been three weeks.

Q. Or it might have been three weeks. A. The time element I can't remember. That is over eight years ago.



*A. Krulewitch, for Deft., Cross.*

2026 But I do remember I did ask her to the apartment on 156th Street, and I took it for her at No. 515 and she was to live there. And there was an empty apartment there which had been testified previous was empty until the end of June until I came back.

Q. When you said in part of that answer, "asked her to go up to 156th Street to stay," what did you mean by those words? A. To live there.

Q. To live there? A. That is right.

Q. And that occurred four or five days after you met her, sir? A. Oh, no. That happened a couple of weeks after.

2027 Q. So that this testimony here is either inaccurate or you meant something else when you so testified? A. The testimony is right. My memory at the time was I said a few days, but it was a few weeks.

Q. Now you testified, if I understand you correctly, sir, that you arrived in Baltimore about 6:30 or 7 o'clock on the evening or the afternoon, the late afternoon, of October 21st, is that correct? A. That is correct.

Q. Let me ask you if you testified, if this question were asked and you made this answer at the first trial:

2028 "Q. When did you go to Baltimore? A"—reading now from page 304 of the record—

"Q. When did you go to Baltimore? A. I went to Baltimore on the 21st day of October, about 3 o'clock in the afternoon I should judge."

A. That is what I am saying now.

Q. Then you arrived there about 3 o'clock in the afternoon? A. I went there 3 o'clock, and it takes about three and a half hours to get there, which would bring me in about 6:30, and I am saying the exact same thing now.



*A. Krulewitch, for Defl., Cross.*

Q. The testimony that you are giving here now is the same as this? A. Absolutely. 2029

Q. That is your testimony? A. That is right.

Q. You now admit, do you not, sir, that a few days before October 21, specifically October 18, you checked baggage at the Pennsylvania Station? A. I definitely checked baggage.

Q. Let me ask you if these questions were asked you and if you made these answers—

Mr. Hilly: I am reading from page 305.

Q. "Q. Didn't you buy three tickets? A. Definitely not. 2030

"Q. You never bought three tickets to Miami? A. Never.

"Q. Is it not a fact that you took a lot of baggage down to the station a few days or a day before the three of you went to Miami? A. No, sir."

Did you make those answers? A. And I still say I never bought three tickets.

Q. Did you check baggage a few days before October 21 when you went to Miami? A. I bought two tickets.

Q. So, when you were asked this question did you buy three tickets, and you just said definitely not— A. That is right. 2031

Q. —but you did not at that time say "Definitely not, I did not buy three; I bought two"? A. No, that was not asked of me.

Q. I see. A. They asked me if I bought three tickets and I said no.

Q. But you did not at that time, sir, say you bought two? A. I don't remember if I did or not.

Q. You also denied at that time that you checked baggage? A. That is correct, that confused me.

*A. Krulwich, for Dept., Cross.*

2032

Q. That confused you? A. That confused me at that time.

Q. So, then, that is one of the occasions then when the record is accurate? A. No, I knew I checked baggage on the 21st. I was not sure of the 18th. That was four years after the time the baggage was checked.

Q. I see. At the time that question was asked you you knew that you checked baggage on the 21st? A. I knew I checked baggage. I didn't say—I knew I checked baggage around that time.

2033

Q. But when you were asked that question you denied checking any baggage? A. I did not. I said it was my signature, and then I was not sure on account of the erasure.

Q. But when you were asked these specific questions that I just read to you you denied checking any baggage? A. Well, I wasn't sure. If I didn't see the slips I could not remember the date.

Q. Now, you had a fight with Joyce in Miami, is that correct, sir? A. Yes, sir.

Q. And at that time you were all through? A. That is correct.

Q. That was the end? A. Yes.

2034

Q. The great romance was over? A. Yes.

Q. Now, Joyce was arrested in December of 1941. That was subsequent to the fight in Miami, isn't that correct?

A. Sir?

Q. I mean that was after the fight in Miami, is that correct? A. You mean 1942?

Q. 1941. You had the fight in November of 1941 in Miami, is that right? A. Yes.

Q. You were arrested in December of 1941, isn't that right, sir, in New York City? A. That is correct.

*A. Krulewitch, for Deft., Cross.*

Q. Joyce was arrested up-State? A. That is correct.

2035

Q. In December of 1941? A. That is correct.

Q. So that with relation to the arrest, the fight happened after the arrest, is that right? A. No, the fight happened in November in Miami. The arrests were in December.

Q. That is what I am saying. That the fight happened—  
A. The fight—you got it wrong, Mr. Hilly.

Q. I got it wrong. The arrest happened after the fight?  
A. Yes, we were arrested after the fight.

Q. O. K. Well, you bailed her out in Miami, didn't you, sir? A. I did not,

2036

Mr. Hilly: I read now from page 48.

Mr. Todarelli: Miami or Jacksonville, Mr. Hilly?

Mr. Hilly: Miami. Maybe I am in error.

Mr. Todarelli: I don't know.

Mr. Hilly: I said Miami.

Q. Let me ask you two questions before I read from page 48. You bailed her out in Miami? A. Never.

Q. You bailed her out in Jacksonville? A. No, you couldn't say I bailed her out. Mr. Kato bailed her out.

Q. Mr. Kato? A. That is correct.

Q. And you asked him to do it? A. Certainly.

2037

Q. You couldn't say then that you bailed her out? A. No.

Q. Mr. Kato did it? A. That is correct.

Q. But it was done at your suggestion? A. That is correct.

Q. And after that fight you took her to a doctor and had X-rays taken of her chest? A. That is correct.

Q. Now, during the year 1941 what was your income?  
A. I don't remember that. I really can't remember it.

*A. Krulewitch, for Deft., Cross.*

2038 Q. Well, I think that there is testimony here that your income was between three and four thousand dollars from the advertising business. A. Probably.

Q. And it was in October, was it not, sir, that you closed that \$5000 deal in Miami? A. I believe—

Q. Isn't that correct, sir? A. I believe so.

Q. And then you had that \$50,000 contract with the Miami Colonial Hotel? A. I believe so.

Q. Well, yesterday you did not testify you believed, sir. A. Well, I had that—

Q. Let me read from page 156 of your testimony. A. I had that contract with the Miami Colonial Hotel. That contract was made previous to that time.

2039 Q. Well, it was in effect at that time, was it not, sir? A. What?

Q. Wasn't it in effect at that time? A. Sure it was.

Q. And you had a valuable interest in the advertising business, is that correct? A. Well, I would call it a valuable interest.

Q. And you had purchased that furniture from your uncle, is that right? A. Yes.

Q. And that furniture was resting in some warehouse in Miami in your name, is that right? A. That is correct.

2040 Q. So that you were the owner of that furniture? A. That is correct.

Q. And you had some cider stubes, is that correct, sir? A. No.

Q. Well, didn't you operate a cider stube up until July of 1942? A. Yes. I just had the fixtures. The place wasn't open.

Q. The place wasn't open? A. No.

Q. Let me ask you if these questions were asked you on the first trial—

*A. Krulewitch, for Deft., Cross.*

Mr. Hilly: I am reading from page 265, Mr. Todarelli.

2041

Q. "Q. Did you own a cider stube at that time? A. Not at that time, no, sir.

"Q. Did you have any interest in it? A. No, sir.

"Q. You have owned cider stubes at one time or another? A. That is right.

"Q. How many? A. Well, I have owned three of them right next door to each other. I only owned three for a period of about a month, about one month.

"Q. Then what happened? Did you sell them? A. I sold them.

2042

"Q. All of them? A. No, I sold two and one I sold the fixtures.

"Q. You continued to operate the third one? A. I continued to operate the third one until July of 1942."

A. Yes, I operated that in May, June or July of 1942 for the purpose of reselling it.

Q. I see. Then you were operating it? A. In them two or three months.

Q. But when you testified that you continued to operate the third one until July of 1942, that answer was not accurate? A. Yes, I operated that. I sold two. I only had them about three weeks to a month. I built them up and sold them. Then I had the third one and I couldn't sell it.

2043

Q. I see. A. So I closed it down and then in about June of '42 this case was over—and May I opened it up and resold it. I sold the fixtures.

Q. The next question was, and I am reading from page 266:

"Q. Then how long in all had you been operating that? A. From about December, 1940, I believe until July, 1942."



*A. Krulewitch, for Deft., Cross:*

2044

A. That is correct.

Q. But you don't say there, sir, do you, that you only operated it in June and July of 1942? A. No, I had the place all the time. I had the other two places. When the other two places were sold, see, this place closed down. I still had the place.

Q. Now, in February of 1942 you filed a petition in bankruptcy, is that correct? A. That is correct.

Q. And the only asset that you listed in that petition was \$100 that you gave to the lawyer? A. That is correct.

2045

Q. You did not list the \$5,000 contract with the Millburn Hotel, did you, sir? A. I did not have that contract.

Q. I see. A. That was for the office.

Q. You did not list your valuable interest in the advertising business? A. You see, what you probably call a job, I would call it a valuable interest. I was getting a commission on the sales.

Q. You didn't list that \$50,000 contract you had with the Miami Colonial Hotel? A. That was not mine.

Q. You didn't list, Mr. Krulewitch, the furniture that you had crated in Miami? A. I did not.

2046

Q. But you concede, do you not, sir, that there was a schedule in the bankruptcy petition? A. I do.

Q. About listing those things? A. I do.

Q. So that in February of 1942 you were broke? A. That is correct.

Q. Now, you testified yesterday, sir, that Joyce told you she was pregnant, is that correct? A. That is correct.

Q. And when did she tell you, sir, that she was pregnant?

A. Between October and November.

Q. Of what year? A. 1941.



*A. Krulewitch, for Deft., Cross.*

Q. Where did she tell you that, sir? A. The exact location I couldn't remember. 2047

Q. Let us see if we can't pick a State. Was it in New York State? A. No, she told it to me in a letter from Florida, and she told me that I was going to be a daddy, and she told it to me in—probably two or three times, but where and when I couldn't say.

Q. Where or when you couldn't say. When was the first time that you knew? A. You mean the first time she told me?

Q. Yes. A. I couldn't remember that.

Q. Well, you say she had a miscarriage, is that right? A. I don't know. 2048

Q. Pardon me? A. I don't know. I only know from what she said as to that.

Q. You mean on one of the nights you spoke to her on the telephone she told you that she had a miscarriage?

A. No, under cross examination by Mr. Zelenko she said that during the month of November she was bleeding profusely, and Mr. Zelenko asked her the question was it because of a miscarriage. That was when that came about.

Q. Well, that was the first time; the first time then that you knew that she had a miscarriage? A. I didn't know. 2049

Q. No, but the first time you had any inkling of that fact was in July of 1943 when she testified in this court?

A. No, she had mentioned it to me earlier.

Q. How much earlier had she mentioned it to you? A. I couldn't remember if it was in October, November or December. I don't know.

Q. When she called you on the telephone? A. I don't remember. I know she had mentioned it, but when it was I don't know.

*A. Krulewitch, for Deft., Cross.*

2050

Q. I am reading from page 73 of your testimony yesterday morning:

"Q. Now, did you have any talk with Joyce with reference to what she says in her letter, Exhibit OO in evidence, about going to have a baby? A. Yes, I was under the impression that that was so from what she had told me.

"Q. Yes. Did you talk with her about it while you were in New York? A. No.

"Q. On the telephone? A. No. You mean when she was in Miami and I was in New York?

"Q. Yes. Yes, I did talk to her about that.

2051

"Q. What was said? A. She was very much enthused about her going to have a baby and I was led to believe that she was going to have a baby, and then it came about that I said to her, 'We better get married', and after I spoke that way to her I remember that she said—I believe it was a couple of weeks after that, at that time she said, 'All right' and I told her, 'As soon as I come down then we would make that arrangement.'

"It wasn't two days after that that she said that she had a miscarriage."

2052

Is that the testimony— A. That was in November or December.

Q. All right. So then— A. Or October. I am not sure of the exact time.

Q. So, then, you did not learn for the first time in July of 1943 that she had a miscarriage? A. No, Mr. Hilly. I didn't say that I learned the first time in July. I said I knew it in October, November or December of 1941. How or where I didn't remember the incident.

Q. I see. A. And then I went further by saying that it was confirmed by Mr. Zelenko in his cross examination.

*A. Krulewitch, for Deft., Cross.*

Q. Well, of course—you said it was confirmed by Mr. Zelenko? A. But she denied it then. 2053

Q. She denied it then? A. She said she was very sick.

Q. But she denied then— A. She said she was very sick.

Q. Then when she was examined by Mr. Zelenko in July of 1943, she denied, did she not, sir, that she had a miscarriage in Florida? A. She said she was bleeding profusely for some days.

Q. I didn't ask you that. You said that twice. I asked you, sir, if she denied it? A. To the best of my recollection she denied that all this cause was from a miscarriage. 2054

Q. Now, when you went down in November, that is, the middle of November, 1941, didn't you question her at that time about the baby? A. No.

Q. You didn't ask her anything about the baby? A. Oh, yes.

Q. And did she at that time tell you she was still pregnant? A. No, that came about—

Q. I asked you a specific question, sir. Did she tell you at that time she was still pregnant? A. I don't remember. I know we had the conversation, but I don't remember exactly the date or night or when it was, but I do know we had this conversation. 2055

Q. Yes. What I want to know, sir, did you ask her at that time anything about the baby? A. I asked her during the telephone call, to the best of my memory, while I was making these calls, how she was and if it were true, and if she was positive of it and so forth, that she were pregnant. I was asking her these things on the phone, and I was sending her money to go to these doctors for that purpose. one of them.

*A. Krulewitch, for Deff., Cross.*

2056

Q. But you were not sending the money for going to the doctor for the bad chest condition? A. Wait a minute, also for that, and I wanted her to be in good health in having the child, and I felt very sorry for her health. Even the time in January when I took her to the doctor I felt sorry for her although we were separated, and even right to this time I feel sorry for her. She is a sympathetic—a girl that needs sympathy. I have no ill feelings to go into these things about what I said to her eight years ago, as I don't remember that, but right to this time that girl needs sympathy. That is how I feel. I have no ill feeling.

2057

The Court: All right. You wait for a question now.

Go ahead, Mr. Hilly.

Q. Have you finished now, sir? A. Yes.

Q. Now I ask you, sir, if in, or if upon you visit to Miami in November of 1941 did you discuss with her about the baby? A. I must have. I don't remember.

Q. All right. A. But I must have.

Q. And at that time did she tell you she was still pregnant or that she had had a miscarriage? A. I don't remember the exact time in November.

2058

Q. Well, sir, that was a big event in your life, was it not, sir? A. Mr. Hilly, I told you what she had told me, but I don't remember exactly when.

Q. Yes, but I asked you, sir, that was a big event in your life? A. Yes.

Q. She was enthusiastic about it and so were you? A. No, I was let down when she told me that she had had the miscarriage, so that event just let me down a good deal.

Q. All right. Well, then, when she told you she had the miscarriage, that was a complete let down, was it not, sir?

A. Yes.

*A. Krulewitch, for Deft., Cross.*

Q. Let me ask you, when did you receive that let-down? 2059

A. You mean the exact date?

Q. I don't want the exact date. Just answer me this question: Was it in Miami? A. It was in the month of November.

Q. When you were in Miami? A. I couldn't tell you that.

Q. You couldn't tell us that? A. No.

Q. Now, you received a telegram, did you not, sir, on November 11th? A. I did.

Q. And that telegram read— A. Wait a minute, not on November 11th. 2060

Q. When did you receive it, sir? A. I received it on November 8th.

Q. On November 8th? A. That is correct.

Q. Let me ask you if these questions were asked you on July 2, 1943:

"Q. And while you were in Florida, or while they were in Florida did you receive telegrams? A. I did, yes, I think there was only one telegram, maybe two, but I think there was only one or maybe two, I am not sure.

"Q. Did you receive a telegram from them on November 11 about this time saying 'It happened. Call us immediately.' A. No. 2061

"Q. You are certain of that? A. I am positive."

Now, so far those questions and answers are correct, is that right, sir? A. No, sir.

Q. They are not correct? A. No, sir.

Q. All right.

"Q. You never had such a telegram in your possession? A. Not on the 11th. I received it around the 13th."

A. No, sir.



*A. Krulévitch, for Deft., Cross.*

2062 Q. You did not make that answer? A. No, sir. Will you allow me to explain that?

Q. I won't allow you to explain anything. I want you to answer specific questions, Mister. A. You have it in your possession.

Mr. Todarelli: If your Honor pleases, I think Mr. Hilly is taking a little bit too much upon himself.

The Court: I expect that you will be able to take care of the matter very nicely on re-direct, Mr. Todarelli.

2063 Mr. Todarelli: I think your Honor is the one who will determine—

The Court: I want the witness to answer the questions, Mr. Todarelli.

Q. In any event, sir, you received a telegram, is that correct, sir? A. I did.

Q. And that telegram read "It happened. Call us immediately. Important. Joyce and Betty." A. That isn't so.

Q. It didn't read that? A. No, sir.

Q. It didn't read that way? A. No, sir.

Q. Let me ask you if these questions were asked you—

2064 Mr. Hilly: I am reading from page 16.

Q. "Q. You never had such a telegram in your possession? A. Not on the 11th. I received it around the 13th.

"Q. I said about the 11th and the telegram read 'It happened.' A. That's right.

"Q. 'Call us immediately.' A. That's right.

"Q. 'Joyce and Betty.' A. That's right.

A. Never made those answers.

Q. You never made those answers? Well, did the telegram contain the words "It happened"? A. It did.



*A. Krulewitch, for Deft., Cross.*

Q. What other words did it contain, sir? A. It said "It happened. Phone me. Love. Joyce." 2065

Q. Only Joyce's name was signed to the telegram? A. That is all.

Q. No one else's name was signed? A. That is all. You have the copy.

Q. Now, when you got that telegram with the words "It happened", did that mean to you in your mind—did that convey the idea to you that Joyce had a miscarriage? A. It conveyed to me the idea that something happened to her physically, whether it was a miscarriage or she got hurt or something, but something happened to her physically. 2066

Q. I see. That is what is conveyed the idea to you? A. That is right.

Q. And it did not convey the idea, sir, that the El Chico Hotel had been raided? A. The El Chico Hotel had not been raided at that time.

Q. I asked you, sir, did it convey the idea to you that the El Chico Hotel had been raided? A. Definitely not.

Q. And that Joyce and Betty had been arrested for prostitution? A. That is your own opinion.

Q. I asked you, sir— A. No, sir.

Q. Now, in connection with the operation of your cider stubes, sir, you put advertisements in the paper for girls, is that right? A. I did. 2067

Q. And you interviewed these girls, is that right? A. I had a girl with me at the time.

Q. And did you interview some of the applicants? A. I did.

Q. And you told them when they came in that the job—the hours were from 8 in the evening until 6:30 in the morning, is that right? A. No, the hours were day and night.

*A. Krulewitch, for Deft., Re-direct.*

2068

Q. Day and night? A. Yes.

Q. And you asked them whether they were married or unmarried, didn't you? A. I had an application form.

Q. And did you tell them that they would receive a commission on the drinks that they sold? A. Salary and commission.

Q. And you emphasized that you sold soft drinks? A. That is correct.

Q. And in the Fall of 1940, did you ask them at that time, or did you tell the applicants when they came in that you had rooms upstairs? A. No, sir.

2069

Q. And did you tell them that they should encourage the men? A. Encourage them to what?

Q. Encourage the men customers? A. Absolutely not.

Mr. Hilly: I have no further questions of this witness at this time, if your Honor pleases.

The Court: Any re-direct, Mr. Todarelli?

RE-DIRECT EXAMINATION by Mr. Todarelli:

Q. Now, the fact of the matter is, Mr. Krulewitch; that a copy of the telegram that Mr. Hilly had questioned you about was introduced in evidence at the first trial? A.

2070

That is correct.

Q. By the Government? A. By the Government.

Q. There was a hearing held before it was introduced in evidence, wasn't there? A. That is correct.

Q. By Judge Clancy? A. That is correct.

Q. And at the termination of that hearing—

Mr. Todarelli: And I am reading now from page 184.

Q. Do you remember this, Mr. Krulewitch—

Mr. Hilly: Just wait till I get the record, please.

Mr. Todarelli: Page 184.

*A. Krulewitch, for Def., Re-direct.*

Q. The Court says: "I think we are finished with this witness, haven't we? No," continues the Court, "there was something pending as to an exhibit. What was it?" 2071

"Mr. Wallace: Exhibit 15.

"The Court: I overrule the objection.

"(Government's Exhibit 15 for identification received in evidence.)"

Do you remember that happening? A. I do.

Q. And was that the telegram? A. That is the telegram.

Mr. Todarelli: I now call upon the Government to produce that telegram. 2072

Mr. Hilly: That is not a copy of a telegram, if your Honor please.

Now, you know very well, Mr. Todarelli, that is not a copy of a telegram. If your Honor is—

Mr. Todarelli: You are wrong, Mr. Hilly. It is right here in the record.

The Court: Wait just a moment. There isn't going to be any argument between counsel. Counsel will address their remarks to the Court and not to each other.

Mr. Hilly: Your Honor— 2073

The Court: Would you wait until I am finished?

Mr. Hilly: I am sorry, sir.

Mr. Todarelli: I apologize, your Honor.

The Court: Counsel will address their remarks to the Court and not to each other.

Now, go ahead.

Q. Mr. Krulewitch, do you remember that Mr. Hoaglund testified at the first trial? A. He did. I do remember.

*A. Krulewitch, for Deft., Re-direct.*

2074

Q. Do you remember him being asked—

Mr. Hilly: I object to what Mr. Hoaglund was asked, if your Honor please.

The Court: I will permit it on re-direct. Go ahead.

Mr. Hilly: Very well, sir.

Q. "Q. Did you have a conversation with him"—meaning you—"in the latter part of 1943? A. I did.

"Q. At that time did he show you a copy of the telegram?

A. He did.

2075

"Q. Do you know the date of the telegram? Did you make a copy of the telegram? A. I copied down on a piece of paper the information, the figures that were on the telegram.

"Q. Have you got a copy with you? A.—

"The Court: When was this?

"The Witness: The latter part of May. I can give you the exact date. I have that paper with me.

"Q. Is that the copy you made at the time? A. This is it.

"(Marked Government's Exhibit 15 for identification.)"

2076

Mr. Todarelli: What I am asking your Honor now is to direct Mr. Hilly to produce for me the paper, Government's Exhibit 15, that was admitted in evidence at the first trial.

The Court: Have you such a document in your possession?

Mr. Hilly: I have such a document, your Honor.

The Court: You have?

Mr. Hilly: Yes, I have, sir.

*A. Krulewitch, for Deft., Re-direct.*

The Court: Is it the fact that ybu cross-examined 2077  
on it. Produce the document.

Mr. Hilly: Very well, sir, I will.

I haven't it, your Honor, but it must be in one of  
the other files I left downstairs. If your Honor will  
give me two minutes I will go downstairs and get  
it, sir.

The Court: Can you go on with something else,  
Mr. Todarelli?

Mr. Todarelli: Yes, your Honor.

The Court: You can get it during the recess.

Mr. Hilly: I will have Agent Hoaglund go down 2078  
and get it, your Honor. I think he can locate the  
file.

Q. I am not sure, Mr. Krulewitch, whether I asked you  
this question—

Mr. Todarelli: If I have not, will your Honor in-  
dulge me?

The Court: Go ahead.

Q. Have you ever been convicted of a crime, Mr. Krule-  
witch? A. No, sir.

Q. When you filed your petition in bankruptey, did you  
have any proprietary interest in the partnership or the 2079  
corporations? A. No, sir.

Q. What was it that you considered a valuable in-  
terest? A. I was the salesman and I brought in contracts  
and I considered it a valuable interest by my contracts and  
my business. I didn't want to go to a stranger where I  
would only get 2½ per cent probably, where I was getting  
5 per cent with the family.

Q. But could anyone sell that at public auction or any-  
thing else? A. Oh no. They had no value.



*I. Krulewitch, for Deft. Re-direct.*

2080 Q. Was it intangible? A. It had no value at all. It was just a job.

Q. But it was valuable to you? A. That is right.

Q. Now these contracts, the \$5000 contract that you closed down there, was that your contract? A. Oh no. It was for the firm.

Q. To what were you entitled? A. \$75.

Q. Did you get that? A. Yes.

Q. And the \$50,000 deal that you had closed, what was your interest in that? A. I got on that, that was previous. I got on that I think a 5 per cent basis.

2081 Q. Well, you got a commission? A. Yes.

Q. You did not have that money at the time you filed your petition? A. No. That was part of my drawings; that is what I used to draw.

Q. What furniture did you have at the time? A. I had two living room sets, or one living room set, I am not sure, or two; I may have sold one, I may have had one.

Q. How much did you pay for them? A. I paid \$140 for it new.

Q. How long after you bought it was it? Let's see: did you buy that from Samuel Levenson? A. That is right.

2082 Q. That was in October, 1940— A. That is right.

Q. 1941? A. That is right.

Q. What value did it have at the time? A. Well, if you went to sell it, and from what I was told I was under the impression that household furniture was not included in the schedule.

Q. Did it have any value? A. Very little value. If I went to sell it secondhand I would probably get \$25 for it.

Q. Were you told that a certain amount of furniture



*A. Krulwitch, for Deft., Re-cross.*

was exempted under the Bankruptcy Act? A. That is right. Household furniture. 2083

Q. Up to the amount of \$250? A. That is right.

Q. Was it worth \$250? A. No.

Q. Did you have anything else that you failed to declare? A. No, not that I can remember.

Q. Were you discharged as a bankrupt? A. I was discharged I believe about one month after.

Q. In this court here? A. In this court.

Q. Was there any objection made by any creditor?

Mr. Hilly: Objected to, if your Honor please.

A. No objection.

2084

Q. How many creditors were there, by the way? A. There was I think—it was a voluntary petition, I done it myself. There was practically only the one.

Mr. Todarelli: That is all.

RE-CROSS EXAMINATION by Mr. Hilly:

Q. You said that you were told that you didn't have to file—you didn't have to include in the bankruptcy petition household assets?

Mr. Todarelli: He did not say that, Mr. Hilly. He said he was told that furniture was exempted up to \$250.

2085

Mr. Hilly: He did not testify first on that particular thing, if your Honor please.

The Court: Ask him now.

Q. Is it your testimony, sir, that household furniture was exempt? A. Up to \$250.

Q. Didn't you testify previously, in the previous trial, sir, that you never—you just signed the bankruptcy petition in blank, that you never had any conversations with anyone about it? A. I had a conversation.

*A. Krulewitch, for Deft., Re-direct.*

2086

The Court: That is not the question. The question is, did you testify to that effect in the first trial?

The Witness: I did.

Mr. Hilly: I have no further questions of the witness.

The Court: Anything further, Mr. Todarelli?

Mr. Todarelli: I am waiting for that—

The Court: We will wait a few minutes. We will take our morning recess now.

(Short recess.)

2087

Mr. Todarelli: Will you mark that paper for identification, please:

(Marked Defendant's Exhibit QQ for identification.)

Mr. Todarelli: I should like to state, your Honor, that the paper that has been marked Defendant's Exhibit QQ for identification is the paper that I requested be produced by Mr. Hilly and was so produced by him.

The Court: Very well.

Mr. Hilly: And was also introduced in evidence as Exhibit 15 at the first trial.

2088

Mr. Todarelli: At the first trial. It has not been introduced in evidence thus far.

Mr. Hilly: Or at the second trial.

**RE-DIRECT EXAMINATION by Mr. Todarelli:**

Q. Mr. Kay, I show you Defendant's Exhibit QQ for identification and I ask you to read it, please. A. You mean the copy of the telegram?

Q. Read it to yourself. A. I have read it.

Q. Do you remember when that was written? A. This was written in May, the month of May I believe it was, 1943.

*A. Krulewitch, for Def't., Re-direct.*

Q. By whom was it written? A. Mr. Hoaglund.

2089

Q. Who sits here at the table beside Mr. Hilly? A.

That is correct.

Q. Agent of the Federal Bureau of Investigation? A.

That is correct.

Q. And did you see him write it? A. I did.

Q. Was that in connection with the arrest on the intimidation charge? A. That was.

Q. And does that paper refresh your recollection as to the papers that you had in your pocket at that time? A. It does.

Mr. Todarelli: Withdrawn, please.

2090

Q. Tell the Court and jury, if you will, the circumstances under which that paper was written. A. I had in my possession the telegram, and I don't remember what other papers I had, and when I was arrested Mr. Hoaglund took all the papers away from me, took everything that I had in my possession. That was on this intimidation charge of May, 1943.

Q. Yes. A. After he took these papers away from me he made copies of different things and especially a copy of this telegram in question.

Q. Was that an original telegram that you had? A. That was an original telegram.

2091

Q. All right. A. After he took them away from me he said to me, "I don't need these any more, this is what I wanted, was this telegram. This is what I was after." He gave me back all the papers, including the telegram. Instead of releasing me he took me over to West Street where I had to give all the papers—

Q. West Street is the jail? A. The jail.

(Continuing) I had to give everything in my possession

*A. Krulewitch, for Deft., Re-direct.*

2092 and put in an envelope, and after I had done that Mr. Hoaglund took that envelope.

Q. And did you ever see that telegram? A. I didn't see the—I didn't get it back from him at all since.

Q. Did you ever get it back from him? A. No.

Mr. Todarelli: I offer the paper in evidence.

Mr. Hilly: No objection to the offer of the paper in evidence.

The Court: It will be received. Mark it as an exhibit.

(Defendant's Exhibit QQ for identification received in evidence.)

2093

Mr. Todarelli: With your Honor's permission. This is written in pencil, ladies and gentlemen of the jury (reads Defendant's Exhibit QQ to the jury).

Q. Mr. Kay, is your recollection refreshed as to the signature on the telegram? A. Yes.

Q. And were the names Joyce and Betty on it? A. Yes.

Q. When you were examined by Mr. Wallace on July 2, 1943, were you questioned about a telegram of November 11, 1941? A. Yes. November 8th was the telegram.

Q. Were you asked whether or not you had received a telegram about November 8th—November 11, 1941? A. Yes.

2094

Q. Did Mr. Wallace at any time point out to you the significance of that telegram? A. No.

Q. Now, during the times that you were questioned were there discussions that were not taken down? A. Yes.

Q. I read from page 16 of the statement taken before Mr. Wallace:

"Q. Did you receive a telegram from them on November

*A. Krulewitch, for Deft., Re-direct.*

11th about that time saying 'It happened. Call us immediately.'? A. No. 2095

"Q. You are certain of that? A. I am positive.

"Q. You never had such a telegram in your possession?

A. Not on the 11th. I received it around the 13th." A.

I told them I received it on the 8th—

The Court: That is not the question.

Q. Were you asked those questions? A. Yes.

Q. Now, was it true that the telegram was received by you around the 13th? A. No.

Q. "Q. I said about the 11th and the telegram read 'It happened'? A. That's right. 2096

"Q. 'Call us immediately'? A. That's right.

"Q. 'Joyce and Betty'? A. That's right.

"Q. What did they mean by 'It happened'? A. I would like to explain that, Mr. Wallace. Joyce—they had 'Love'. After that I had written Joyce a letter November 9th, and in this letter I asked her to send me this telegram. I tried to get them on the telephone for about two or three days previously and couldn't get them on the telephone, and that is why I sent them this letter air mail, special delivery, or registered, telling her to send me a wire and let me know—let me get myself clear on that. I remember sending them a letter to let me know immediately by wire how her condition was, and I took it for granted that the telegram meant something wrong physically." 2097

Were you asked those questions and did you give those answers? A. Yes.

Q. And were they true? A. That was definitely true.

Q. Then there is this on the record: "Off the record."

Mr. Todarelli: And Mr. Hilly will concede that

*A. Krulewitch, for Deft., Re-direct.*

2098

means that a conversation between Mr. Wallace and Mr. Krulewitch took place that was not taken down?

Mr. Hilly: Or his attorneys.

Mr. Todarelli: Or his attorneys. At any rate, there was something said at that time that was not taken down? .

Mr. Hilly: That is right.

Q. Did Mr. Wallace at any time accuse you of knowing that the place had been raided on November 11th and that this telegram had that significance? A. Not that I know of.

Q. This was introduced at the first trial, was it not? A. This paper?

2099

Q. This paper—

The Court: That has already appeared, Mr. Todarelli.

Mr. Todarelli: I am sorry. I think you are right.

Q. And was it introduced at the second trial, Mr. Kay?

A. No, it was not.

Mr. Todarelli: I now call upon the Government to produce the reports of the Federal Bureau of Investigation wherein there are certain mentioned dates showing this telegram.

2100

Mr. Hilly: Such a report has been produced, and I am only making available, if your Honor pleases, page 13 and the top of page 14 of the report which it is contained in.

Mr. Todarelli: I should like to offer in evidence the last paragraph on page 13 and the first paragraph on page 14.

Mr. Hilly: I have no objection to such offer, if your Honor pleases, but since it is an FBI report can we read it into the record?



1. Krulwich, for Deft., Re-direct.

Mr. Todarelli: Fine.

2101

The Court: It may be received. Let it be read into the record.

Mr. Todarelli: (Reading) "At 11:15 p. m. on November 11, 1941, the following telegram was sent to Alvin Kay, Apartment 1-J, 325 East 77th Street, New York, from telephone 3-8006."

Mr. Hilly: And are you willing to concede that is the telephone at the El Chico Hotel?

Mr. Todarelli: Yes.

And then the body of the telegram, quoted and in capital letters:

2102

"IT HAPPENED CALL US IMMEDIATELY IMPORTANT SIGNED JOYCE AND BETTY."

And the telegram, if I may repeat, your Honor, Exhibit QQ—

The Court: There will be time to argue that to the jury. It is on the record now.

Mr. Todarelli: All right, your Honor.

Q. You were present in court when Mr. Rumans testified, were you not? A. I was.

Mr. Todarelli: That is all.

Mr. Hilly: I want to read some of these other notations that appear on this paper.

2103

Mr. Todarelli: I read them all, Mr. Hilly.

Mr. Hilly: You did not.

Mr. Todarelli: I did.

Mr. Hilly: You did not.

The Court: There will be no further argument about it. You may read the exhibit to the jury if you wish.

Mr. Hilly: (Reading) "Papers, et cetera, in Al Kay's possession 5-28-43", and on the top of this

*A. Krulewitch, for Deft., Re-cross.*

2104 exhibit appears "John Pacifico, Fifth Division, detective who arrested Joyce.

"Certified copy of certificate of doing business under assumed name; cafe, Yorkville, soft drinks, 242 East 85th Street. Ernest Schumberger, 1235 Lexington Avenue, V. Irene Miller, 201 East 93rd Street, New York City."

**RE-CROSS EXAMINATION by Mr. Hilly:**

Q. Now, this telegram here that you are talking about, you say that Mr. Hoaglund copied that, is that correct? A. That is correct.

2105 Q. And he copied that from the telegram that you had in your possession, is that right? A. That is correct.

Q. And that was the telegram that you received from Joyce, is that right? A. That is correct.

Q. Now, yesterday with respect to Government's Exhibit 7, I directed your attention that was contained in that exhibit, which you say was signed by John Dolan? A. That is correct.

Q. Now, on April 14, 1947 you were present in this courtroom? A. I was.

2106 Q. And at that time you heard John Dolan testify, is that correct? A. I did.

Q. And at that time you heard him testify that he had never signed any such statement for you?

Mr. Todarelli: Your Honor, I object to this. That was not part of this trial at all. That was in connection with a separate proceeding entirely.

The Court: I will permit the question.

A. I heard him make several denials, which were not true on his part.

*A. Krulwich, for Defl., Re-cross.*

Q. Which were not true on his part? Well, you heard him specifically, sir, say that— 2107

Mr. Todarelli: I object to reading from something not in evidence, not part of the proceedings of this trial.

The Court: I will sustain that objection.

Q. You heard him state that he had not signed that statement for you on December 10th? A. I heard him say that.

Q. You heard him state, did you not, sir, that he opened the door of your apartment for the special agents of the Federal Bureau of Investigation on December 6th? 2108

Mr. Todarelli: May I have a running objection to all these questions on the same grounds, your Honor?

The Court: Yes, you may, Mr. Todarelli.

Q. You heard him testify that he opened your door on December 6th? A. I heard that.

Q. And you heard him testify, sir, that he was not threatened by any special agent of the Federal Bureau of Investigation? A. That I don't remember.

Mr. Hilly: Would you stipulate that the witness Dolan so testified?

Mr. Todarelli: I can't stipulate, your Honor, to that effect because I have an objection, and I say that it was not part of these proceedings. 2109

The Court: He is not asking you that. If you do not want to stipulate, say no.

Mr. Todarelli: No, your Honor.

Mr. Hilly: Now, if your Honor please, I would like to read that testimony.

The Court: No, I am not going to permit you.

Q. But that occurred on April 14th, and you say you

*W. R. Hoaglund, re-called in Rebuttal, for Gov't, Direct*

2110 don't remember that, sir? A. I don't remember every one's testimony, everything that was said, but I do know he was not telling the truth.

Q. When he testified in this court he was not telling the truth? A. That is right. He testified falsely about the baggage, too.

Mr. Hilly: I have no further questions of this witness at this time.

Mr. Todarelli: That is all.

(Witness excused.)

Mr. Todarelli: Defense rests.

2111 Mr. Hilly: Rebuttal. The Government is ready to proceed.

The Court: Go ahead.

Mr. Hilly: Mr. Hoaglund, will you take the witness stand, please.

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WALLACE R. HOAGLUND, re-called as a witness on behalf of the Government, in rebuttal, having been previously sworn, testified further as follows:

Direct Examination by Mr. Hilly:

2112 Q. I show you Defendant's Exhibit QQ in evidence. Is that in your handwriting, sir? A. Yes, it is.

Q. Everything contained on the page is in your handwriting, is that right, sir? A. That is correct.

Q. I direct your attention to the portion of the paper starting with "Copy of telegram" down to the names "Joyce and Betty" and ask you specifically if that is in your handwriting? A. It is.

Q. And did you copy that from something? A. I did.

*W. R. Hoagland, re-called in Rebuttal, for Gov't, Cross.*

Q. When did you copy it, sir? A. May 28, 1943.

2113

Q. And where did you get the paper that you copied it from? A. From Alvin Kay.

Q. And do you recall the paper that you copied it from? A. Yes, I do.

Q. Will you describe that paper for us? A. It was a yellow sheet of paper, a Western Union form, and the information on the form was written in pencil.

Q. Now, I notice here appear the words "Miami, Florida, November 8, 11.15 p." I direct your attention to the date November 8, and over it appears the notation "10", is that correct? A. With a circle around it.

2114

Q. Did you put that 10 after? A. Yes, I did.

Q. What were the circumstances under which you placed that 10 there, sir? A. Well, there were other figures above the 8 which were not absolutely discernible. It appeared to me a 10 and I put the circle around it as being a questioned figure.

Q. As a questioned figure? A. Correct.

Q. With respect to the date? A. That is correct. There was one other questioned figure there with respect to the time.

Q. But the 10 was put there as a questioned figure on the date, is that correct? A. That is correct.

2115

Mr. Hilly: I have no further questions of this witness.

CROSS EXAMINATION by Mr. Todarelli:

Q. You know what a telegram is, don't you? A. Yes, sir.

Q. You have seen hundreds of telegrams in your lifetime, haven't you? A. That is correct.



*W. R. Hoaglund, re-called in Rebuttal, for Gov't. Cross*

2116 Q. You wrote on that paper copy of a telegram, didn't you? A. "Because that is exactly—

Q. Did you write on that paper copy of telegram? A. On this paper?

Q. Yes. A. Yes, I did.

Q. Weren't you, therefore, copying a telegram? A. No, sir.

Q. What is there that shows that it was not a telegram?

A. I wrote on this paper exactly what was on the piece of paper that I was copying from.

2117 Q. Did you see on that paper that you were copying from a piece of paper? A. Did I see on this piece of paper?

Q. Yes. A. Yes, sir.

Q. You said on that paper "Copy of telegram", didn't you, Mr. Hoaglund? A. Yes, sir.

Q. And that is what it was, a telegram, wasn't it? A. Absolutely not. Absolutely not.

Q. Is there anything on that paper to indicate that whatever you copied that you called a telegram had the date November 11? A. Yes, because there was a date up in the righthand corner January 20, 1942, p. m. 7:24.

2118 Q. Is there anything there that would indicate November 11? A. No, sir.

Q. You know that the raid down at Miami took place on November 11, don't you? A. That is correct.

Q. And you realized that the significance of that telegram was that if the telegram was sent on November 11 it must have referred to the raid, didn't you? A. The telegram that was sent was sent on November 11.

Q. Where is that telegram that was sent on November 11? A. I have never seen it.



*W. R. Hoaglund, re-called in Rebuttal, for Gov't. Cross.*

Q. Well, how can you tell us that in a court of law that that telegram was sent on November 11 if you have never seen it? A. The testimony is already in there, sir, that you introduced from our report. 2119

Q. In other words, in your report, and you had part of the making of that report, you stated that a telegram was sent on November 11, have you not? A. I did not make that report.

Q. Didn't you contribute to that report? A. Not that report.

Q. Aren't you the one that found the information on Kay in May, 1943? A. Yes, I am. 2120

Q. Didn't you seek to give this Court and jury the impression that that telegram before it was produced in court this morning was in fact dated November 11? A. Well, it was dated November 11.

Q. Where is there anything on there to indicate it was dated November 11? A. Now, you have reference to my testimony—

Q. No, I have reference to that telegram there, copy of telegram dated November 8. Is there anything on there to show that it was November 11? A. No, sir, there is nothing on here. 2121

Q. No. Did you go to the telegram office when you saw that telegram—that paper, did you say? A. I did not.

Q. Did anybody go to the telegram office? A. Someone had gone to the telegram office in Florida between December 3 and December 6, 1941.

Q. And had found that there was such a telegram? A. That is correct.

Q. And why didn't they produce the telegram? A. At the time of the trial when an effort was made to produce

*W. R. Hoagland, re-called in Rebuttal, for Gov't, Cies.*

2122 it, we were advised that the copies were destroyed after being kept one year.

Q. You said that from December 3 to December 6 somebody went down to Florida to ascertain from the telegram office that such a telegram had been sent on November 11?

A. Yes.

Q. And you will note that the telegram that was sent on November 11, according to your report, is identical with the wording of that telegram of November 8?

Mr. Hilly: It is not identical, if your Honor pleases. It is not identical.

2123

The Court: That is enough. There won't be any argument between counsel.

Q. Is that right? A. It is not identical.

Q. What is the difference about it? A. The paper that I copied, which I took from Alvin Kay, contained the date November 8 and some other date above it, which I believe to be 10, and I circled it as being a questioned date.

Q. The body of the telegram is the same, isn't it? A. The body of the telegram is exactly the same, yes, sir.

Q. And on December 3, you recognized, did you not, the significance of a telegram dated November 11 with that

2124 "It happened" on it? A. On December 3?

Q. Yes. A. 1941?

Q. Yes. A. Well, I would not have known at that time, Mr. Todarelli, as that report was prepared in Florida and the period in which the investigation was conducted as indicated on the report is December 3 and December 1941.

Q. Your report indicates, does it—do I understand you to say that some time between December 3rd and December

*W. R. Hoaglund, re-called in Rebuttal, for Gov't. Cross.*

6th, 1941, less than two months after the El Chico was raided, that agents of the Bureau went to the telegraph office and ascertained that a telegram had been sent on November 11th? A. In Miami, correct.

2125

Q. Is that what you are saying? A. In the Western Union in Miami, that is correct.

Q. Such copy of a telegram has never been produced; am I right? A. That is right.

Q. You are trying to lead us to believe—

Mr. Hilly: Objected to.

Q. Do you want us to believe that between December 3rd and December 6th that the agents of the Federal Bureau of Investigation did not procure a copy of such telegram? A. We never did procure a copy of that telegram; that is right.

2126

Q. There wasn't any question, was there, that the telegraph office did have copies of those telegrams less than two months after the telegram was sent? A. No, there is no question about that.

Q. They are destroyed after a year, are they not? A. That is my understanding.

Q. They were available to you, weren't they? A. On December 3rd?

2127

Q. Yes. A. Yes, and they were made available.

Q. The Western Union Company has never refused to produce for the Federal Bureau of Investigation any telegrams that the Federal Bureau has asked; am I right?

Mr. Hilly: Or anyone else, for that matter, if your Honor please.

A. We were not—

The Court: Let the question be answered.

*W. R. Hoaglund, re-called in Rebuttal, for Gov't, Re-direct  
J. Culhane, in Rebuttal for Gov't, Direct.*

2128

A. (Continuing) We were not given possession of that telegram, Mr. Todarelli.

Q. Pardon? A. We were not given possession of that telegram on December 3rd.

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. This paper here, so that there can't be any mistake about it, copy of telegram Western Union nineteen—now, wait, let us start it this way. "Copy of telegram Western Union", that is in your handwriting, is that right, sir?

A. That is correct.

2129

Q. What were the circumstances under which you wrote that down? A. That is exactly what was on the piece of paper that I copied it from.

Q. Everything else that appears here, was that all on that same piece of paper? A. Every bit of it.

Q. When you say, "Copy of telegram Western Union", you were not copying the telegram, you were copying exactly what was on the paper? A. Word for word.

Mr. Hilly: I have no further questions.

The Court: That is all, Mr. Hoaglund.

(Witness excused.)

2130

Mr. Hilly: Mr. Culhane.

JAMES CULHANE, called as a witness on behalf of the Government, in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Culhane, what is your occupation, sir? A. Long shoreman right now.

*J. Culhane, in Rebuttal for Gov't, Cross.*

Q. In 1934, sir, what was your occupation? A. I was bell captain at 10 Park Avenue Hotel. 2131

Q. For how long a period were you bell captain at 10 Park Avenue? A. Oh, I would say I was there nine or ten years.

Q. Do you recall when you started to work there? A. In 1935.

Q. And you worked there continuously up until you left; is that correct, sir? A. That is right.

Q. Was there a tenant at 10 Park Avenue by the name of Kay? A. Yes, there was.

Q. Do you see him in the courtroom here? A. The second man over there (indicating). 2132

Mr. Hilly: Identifying the defendant Alvin Kay.

Q. Now I show you a picture which is marked Government's Exhibit 1 in evidence and ask you if you know the woman who is represented on that picture?

Mr. Todarelli: I object to this, if your Honor please, on the ground that it is not proper rebuttal.

The Court: In my discretion I will permit it.

Mr. Todarelli: I respectfully except.

Q. Do you know that woman? A. Yes.

Q. By what name do you know her, sir? A. Mrs. Kay. 2133

Q. Where did you see her, sir? A. At 10 Park Avenue.

Q. During the time that Mr. Kay was resident there?

A. That is right.

Mr. Hilly: I have no further questions of this witness. You may inquire.

CROSS EXAMINATION by Mr. Todarelli:

Q. When did you see Exhibit 1, this photograph? A. That picture? Just now.



*J. Culhane, in Rebuttal for Gov't, Cross.*

2134 Q. That is the first time you ever saw it? A. No, it's not.

Q. When did you first see it, Mr. Culhane? A. The District Attorney showed me that picture.

Q. When did he show you that? A. Some time ago.

Q. He says to you, "Did you ever see that girl before?" is that right? A. That is right.

Q. You have seen a lot of girls in your life, haven't you? A. Yes, I have.

Q. And you saw this girl about 1935 you say? A. '35, yes, '36.

2135 Q. About '36? A. That is right.

Q. By the way, it was recently, wasn't it, that Mr. Hilly asked you to come down to this office and showed you this photograph? A. No. I believe Mr. Hilly came to me in 1943.

Q. 1943. Mr. Hilly came to you in 1943? A. I wouldn't be sure about the year, but it was way back. Maybe four or five years ago.

Q. And you were being asked to identify a woman who was there about seven or eight years before that? A. That is right.

2136 Q. And you recognize her from the photograph, is that right? A. Yes.

By Mr. Hilly:

Q. When you say "Mr. Hilly"—

Mr. Todarelli: Wait a minute. I am not finished.

Mr. Hilly: Oh, I am sorry, sir.

By Mr. Todarelli:

Q. Don't you know that Mr. Hilly hasn't been in this case except for the past year and a half or two?

Mr. Hilly: He doesn't even know Mr. Hilly.



*J. Culhane, in Rebuttal for Gov't, Cross.*

A. I don't know who Mr. Hilly is.

2137

Q. Why did you say Mr. Hilly came up to see you? A. Somebody from the District Attorney's office.

Q. But you said a moment ago, Mr. Culhane— A. You asked me a moment ago if I saw the picture before and I said yes.

Q. Didn't you say, "Mr. Hilly came to me about 1943"? A. Some Mr.—I don't know what the last name would be. You only wanted to know from me if I had seen the picture. I said yes.

Q. Well, I say, you identify this girl from the picture? A. I identified the girl.

2138

Q. They told you who she was, didn't they? A. They didn't have to tell me who she was.

Q. They told you that it was Mrs. Kay? A. They asked who the person was. I told them that it was Mrs. Kay.

Q. That was about how long ago? A. I would say four years ago, maybe five.

Q. And then were you asked to come down again? A. No. This is the first time I have ever been in court.

Q. Weren't you asked to come down to the District Attorney's office last week or this week, or the week before last? A. No.

2139

Q. How did you come down here? A. I was asked to come down here yesterday; I wasn't put on the stand. I was asked to come down here today.

Q. I say, you were here yesterday? A. Yes.

Q. I asked you that; when was the last time you came down, and you said, "This is the first time I have been here." You were here yesterday? A. I said this is the first time I have been on the stand.

Q. I understand that. I am talking about coming down

*J. Culhane, in Rebuttal for Gov't, Re-direct.*

*G. Matray, in Rebuttal for Gov't, Direct.*

2140

to the office in this building. When did you come down here? A. Yesterday.

Q. They showed you this photograph again? A. That is right.

Q. This is the first time you have been called as a witness in this case, is that right? A. That is right.

Mr. Todarelli: That is all.

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. You said that you were asked to come down yesterday; is that correct, sir? A. That is right.

2141

Q. A special agent of the Federal Bureau of Investigation by the name of Lowman asked you; is that right? A. That is right, Mr. Lowman.

Q. He said that Mr. Hilly was the assistant U. S. attorney in the case; isn't that correct, sir? A. That is right.

Q. And I am Mr. Hilly. I never saw you? A. I never met you before.

Q. Until you came in through the door that time; is that right? A. That is right.

Mr. Hilly: That is all.

The Court: That is all, Mr. Witness.

2142

(Witness excused.)

Mr. Hilly: Mr. Matray.

GEORGE MATRAY, called as a witness on behalf of the Government, in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mr. Matray, what is your occupation, sir? A. I am manager of the Hotel 10 Park Avenue.

*G. Matray, in Rebuttal for Gov't, Cross.*

Q. How long have you been manager of the hotel at 10 Park Avenue? A. I am manager there since 1940. I came to work in 1938 as desk clerk. — 2143

Q. You came to work in 1938? A. That is right, sir.

Q. At the time you went to work in 1938 was there a tenant in the hotel by the name of Alvin Kay or Mr. Kay?

A. Yes, sir.

Q. Do you see him here in court, sir? A. Yes, sir. Right there I believe, the second gentleman (indicating).

Mr. Hilly: Identifying the defendant Alvin Kay.

Q. Are you still the manager of the hotel, sir? A. Yes, sir. 2144

Q. Looking at Government's Exhibit 1 in evidence, I ask you, sir, do you know that woman? A. Yes, sir.

Q. By what name do you know her, sir? A. Mrs. Rose Kay.

Q. Where did you become acquainted or learn to know this woman? A. At the hotel, 10 Park Avenue.

Q. Now, you saw me yesterday, is that correct, sir? A. That is right.

Q. That is the first time you ever saw me? A. That is right.

Q. And when did you see her there, sir? A. I seen her on several occasions coming and going out of the hotel. 2145

Q. Do you know where she lived when she lived at the hotel? A. She lived in Apartment 21-A.

Q. Who occupied Apartment 21-A? A. Mr. Kay.

Mr. Hilly: You may inquire, Mr. Todarelli.

CROSS EXAMINATION by Mr. Todarelli:

Q. Were you ever here in the court room during this trial? A. Yes, sir.

*G. Matray, in Rebuttal for Gov't, Cross.*

2146 Q. You heard some of the testimony? A. I was here yesterday, sir.

Q. Did you stay in the courtroom? A. I was here from about 1:15 to about 3:15.

Q. In the courtroom? A. That is right.

Q. While the testimony was going on? A. That is right, sir.

Q. Did you know you were going to testify in this case? A. Yes, sir.

Q. Were you told that witnesses were not permitted to be in the courtroom? A. No, sir.

2147 Q. Did Mr. Hilly know you were here yesterday? A. I seen Mr. Hilly right here in the courtroom.

Q. Did he know you were here yesterday afternoon? A. That I couldn't say, because he just told me to come back at 1:15, and I did come back at 1:15 and stayed here.

Q. When did Mr. Hilly tell you to come back at 1:15? I seen him—I think about 12 o'clock.

Q. Aren't you a little confused, Mr. Matray, about the time that you were here in the courtroom? A. No.

Q. Don't you know that this— A. No, pardon me. 2:15; I am sorry.

2148 Q. You were confused about that? A. That is right. 2:15.

Q. Mr. Hilly told you about 12 o'clock to come back at 2:15? A. Mr. Hilly told me at one o'clock that I should come back at 2:15.

Q. Before one o'clock where were you? A. Before one o'clock. I arrived here at one o'clock.

Q. Mr. Hilly told you he was going to use you as a witness, didn't he? A. That is right.

Q. And he told you what the purpose of your testimony was, didn't he? A. Yes.

*G. Matray, in Rebuttal for Gov't, Cross.*

Q. Did he ever talk to you about this case before yesterday? A. No. 2149

Q. At one o'clock? A. No, sir. The first time I met Mr. Hilly was yesterday.

Q. He talked to you about this case before yesterday at one o'clock? A. I think in 1943 or 1944, I don't know the year, some FBI agent.

Q. Came up to you? A. That is right.

Q. And he showed you the picture that you saw this morning? A. That is right.

Q. And they asked you if you recognized this woman? A. That is right. 2150

Q. You remember the name Rose, don't you? A. Yes, sir.

Q. When did you become manager of the place? A. I became manager in 1940.

Q. What were you before that? A. Desk clerk.

Q. Pardon? A. Desk clerk.

Q. At the same place? A. Yes, sir. I started there in 1938, January 1st, as desk clerk.

Q. When did you see Mr. Kay and this girl there? A. I seen him practically every day.

Q. Well, did you see them before January— A. No. 2151  
I couldn't say, because I started working there in 1938.

Q. And it was between January—how long did they live there, do you know? A. The records show that they checked out '39, June 1st.

Q. June 1st, 1939. You do remember the name Rose, do you not? A. Yes, I do.

Mr. Todarelli: That is all.

Mr. Hilly: Just one or two questions.

*G. Matray, in Rebuttal for Gov't, Re-direct.*

2152

RE-DIRECT EXAMINATION by Mr. Hilly:

Q. You arrived here yesterday at one o'clock, is that right? A. That is right, sir.

Q. And I spoke to you at that rail there (indicating) is that right? A. That is right.

Q. And then I told you to come back at 2:15, is that right? A. That is right.

Q. You came back at 2:15? A. Yes.

Q. And when you came back at 2:15 you were in the second— A. I was sitting—

2153

Q. Sitting back there, in the back of the courtroom? A. The first row.

Q. I came over to you, I took you, told you to go outside, did I not? A. No, you did not, sir.

Q. When did I tell you to go outside? A. When the court recessed, around 3:15.

Q. Oh, when the court recessed around 3:15 I told you then to get out, that you couldn't be in the courtroom?

The Court: We won't be bothered about that. That is only making it worse.

Mr. Hilly: Very well.

2154

The Court: How many more witnesses have you, sir?

Mr. Hilly: I have two more witnesses.

The Court: Are they very long?

Mr. Hilly: I think not.

The Court: Ladies and gentlemen, due to the fact that we have to adjourn this afternoon on account of an engagement that one of the jurors has, I would like very much to finish the testimony this morning. Have any of you any objection to sitting until 1:30?

Very well. Go ahead.

Mr. Hilly: Miss Murphy, please.



*B. L. Murphy, in Rebuttal for Gov't. Direct.*

BELLA L. MURPHY, called as a witness on behalf of the Government, in rebuttal, being first duly sworn, testified as follows: 2155

Direct Examination by Mr. Hilly:

Q. Miss Murphy, what is your occupation? A. Parole officer with the State Division of Parole.

Q. To what institution are you attached? A. Westfield State Farm, Bedford Hills.

Q. Were you attached to that institution in December, 1939? A. I was.

Q. And, specifically, on December 17, 1939 were you present during a visit one of the inmates had with a man? 2156  
A. I was.

Q. Do you recall the name of that inmate? A. Elizabeth Johnston.

Q. Do you recall the name of the man with whom she had the interview? A. Alvin Kay.

Q. Were you present during the entire interview? A. Yes.

Q. Did you overhear what was said? A. Yes.

Q. And during the course of the interview did you make notes of what transpired? A. Yes. 2157

Q. And thereafter did you prepare a memorandum? A. I did.

Q. Now, will you look at this paper here, which is marked Government's Exhibit 30 for identification. Is that your memorandum? A. That is.

Q. And you have been in the witness room and you have reread that memorandum, is that correct? A. Yes.

Q. I gave you this file before; is that right? A. That is right.

*B. L. Murphy, in Rebuttal for Gov't. Direct.*

2158 Q. Now will you tell us as best you can recall what was the conversation that took place between Elizabeth Mary Johnston and this Alvin Kay on December 17, 1939?

Mr. Todarelli: I object to this, your Honor, on the ground that it is improper rebuttal, does not attempt to disprove anything of a material issue that was brought out on the defense, on the case of the defense.

The Court: In my discretion I will permit it.

Mr. Todarelli: Exception.

2159 Q. Will you tell us the conversation as best you now recall? A. The substance was to inform Elizabeth Johnston that he had secured the services of two Westchester County lawyers to have her released from the institution, this was in December and she was to be out before Christmas. He promised her that these lawyers would visit her within the next 48 hours. He criticised her appearance and the discipline at the institution, and I recall that he was—he instructed her as to what she should tell these lawyers when they interviewed her. He asked her outright if she had told him that she had committed prostitution with an employee at the institution. She said no, she had never said that. That matter was dropped. But he continued to tell her how she should report her mistreatment and poor management at the institution.

2160 Q. Now, toward the end of that interview did he say anything to you? A. Not toward the end as I recall it, nothing directly to me. He objected when he saw me taking some notes and said that when—I remember that he had permission from the Commissioner of Correction to visit her once only; he said that he would come again and “When I come again I will bring a stenographer with me.”

*B. L. Murphy, in Rebuttal for Gov't, Direct.*

to take down what is said, not just what someone wants to take down. 2161

Q. Did he say anything to you about the conviction of the witness?

Mr. Todarelli: Your Honor, I think that the witness ought to be permitted to tell what took place without any leading.

The Court: Well, the question is a little bit leading.

Mr. Hilly: Very well.

Q. Was there anything else said at that time? A. He produced I think a copy of a commitment or a document—I think it was a document indicating that she had not been found guilty. Now, this is eight years ago and I am not quite sure, but I made a record of it. It is in the case history. 2162.

Q. Were you able to see the number on that paper? A. If I see the docket number. I recorded it but I don't remember it.

Q. Will you look at Government's Exhibit 30 marked for identification, and I direct your attention to this, and see if that refreshes your recollection? A. Yes.

Q. As to the docket number? A. The docket number was 3433. It recalls to my mind that there had been two arrests and two charges. She had been found guilty on the other. 2163

Q. The one he showed you was the one on which she was found not guilty? A. Yes.

Mr. Hilly: If your Honor pleases, at this time I have no further questions of this witness.

Mr. Todarelli: No questions.

The Court: That is all.

(Witness excused.)

Mr. Hilly: Mrs. F. Ginsburg.

*F. R. Ginsburg, in Rebuttal for Gov't. Direct.*

2164 **FANNIE R. GINSBURG**, called as a witness on behalf of the Government, in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. Hilly:

Q. Mrs. Ginsburg, what is your occupation? A. I am a stenographer at the United States Attorney's office.

Q. For the Southern District of New York? A. For the Southern District of New York.

Q. And you have been employed in the U. S. Attorney's office in excess of ten years? A. I have.

2165 Q. On July 2, 1943 were you employed in the U. S. Attorney's office? A. I was.

Q. And on that date did you take a question and answer statement from a man by the name of Alvin Krulewitch? A. I did.

Q. And was that statement taken in the office of an assistant by the name of Wallace? A. It was.

Q. Now I show you Government's Exhibit 31 for identification, and I ask you if that is a transcript of your notes of that day? A. It is.

2166 Q. Now these last pages here, they are not a transcript of your notes, is that right? A. No, they are not. They are of another stenographer.

Q. But the pages here numbered 1 to 18, and the last page, which would be page 19, although it is unnumbered, is a transcript of your notes? A. It is.

Q. Now, have you compared—

Mr. Todarelli: I object to this, your Honor, on the ground that it is improper rebuttal.

The Court: He may inquire, Mr. Todarelli.

*F. R. Ginsburg, in Rebuttal for Gov't. Direct.*

Q. Now, this here is a copy of the statement, is that correct, a carbon copy? A. Yes. 2167

Mr. Hilly: Will you mark this 31-A for identification, please.

(Marked Government's Exhibit 31-A for identification.)

Q. Now looking at the questions that appear on page 2, starting with the question "Did you live at 555 West 155th Street?" and the answer "No, 156th Street", and taking in one, two, three, the four questions down, have you compared those questions with your notes? A. Yes, I did.

Mr. Todarelli: I have a running objection, of course, your Honor? 2168

The Court: Yes.

Mr. Todarelli: To all this testimony?

The Court: Certainly, Mr. Todarelli.

Q. And those questions as they appear on your transcript are accurately transcribed, is that correct? A. I will look at it now.

Q. Yes, you can look at it again? A. It is.

Q. Now, on page starting with the question "Now, 10 Park Avenue, had anybody been living with you there?

A. Yes, some girl", and down to the third question. Have you compared those questions, the transcript of those questions and answers with your notes? A. I have. 2169

Q. And are those questions accurately transcribed? A. They are.

The Court: And the answers, too?

Q. And the answers? A. Yes, sir.

Q. Now at page 4, the question appearing on the top of the page, "At 325 East 77th Street who lived with you?

A. Joyce and I and Rose Sookerman partly."



*F. R. Ginsburg, in Rebuttal for Gov't. Direct.*

2170 Have you compared that question and that answer with your notes? A. Yes, I have.

Q. And is that an accurate transcription? A. It is, except that in writing Rose Sookerman I wrote Rose S.

Q. How long after you took the statement did you transcribe your notes? A. The next day it was finished.

Q. And that Rose S. was your abbreviation for Rose Sookerman? A. Yes, after writing it once I would either write Rose S. or R. S.

2171 Q. Now going down further on that page to the question, "Did you ever rent an apartment, a second apartment at 156th Street? A. No, sir.

"Q. You are sure of that? A. Positive."

Did you check those two questions and those two answers with your notes? A. Yes, I did.

Q. And are those questions and those answers accurately transcribed? A. They are.

Q. Now going up to page 5, starting with the question, "Did you live with her about a week thereafter? A. Yes, sir", and the three questions that follows and the answers, did you check those questions and those answers with your notes? A. I did.

2172 Q. And did you accurately transcribe them? A. I did.

Q. Now going down to the bottom of the page, starting with the question, "Did you receive any money from Rose Sookerman or Joyce while you were in Chicago?", and continuing with the answer on the top of the next page, the next question, and the second question and answer which appear on that page, did you check those questions and answers your notes? A. I did.

Q. And did you find that the question commencing that the answer to the question "Something wrong with



*F. R. Ginsburg, in Rebuttal for Gov't, Direct.*

your ear", did you find that your transcription, or in your transcribing you added a word? A. I did. I added the word "it" in transcribing it by error. 2173

Q. You added the word "it"? A. Yes.

Q. So that question should now read, or the answer should now read, "No, it might have been. I don't know, oh, yes", and the word "it" which follows the word "yes" is not in your notes? A. That is right, and it should have read, "No, it might have been. I don't know, oh, yes, just came to my attention", instead of "it just came to my attention."

Q. Now going over to page 7, starting with the question, "No one lived there with you? A. I had a maid. I had a maid up on 174th Street. 2174

"Q. Just a maid and Bernice lived with you? A. That's right."

Did you check those? A. I would like that question repeated, please. What question was that?

Q. On page 7: "No one else lived with you", starting with the question, "No one else lived with you?" A. "No one else lived with you?" I find that now.

Q. Do you find that now? A. Yes.

Q. Have you checked those questions and those answers with your notes? A. Yes, I did. 2175

Q. And are they accurately transcribed? A. They are.

Q. Now, down in that same page, and I am talking now with respect to page 7, starting with the two questions there.

"Were you ever in a cider stube on 81st Street? A. Yes.

"Q. Who owned it? A. Rose Sookerman."

Have you checked those questions and those answers with your notes? A. I have, yes. I have the question.

"Were you ever in a cider stube on 81st Street? A. Yes.

*F. R. Ginsburg, in Rebuttal for Gov't. Direct.*

2176 "Q. Who owned it? A. Rose S."

I abbreviated the name.

Q. And, therefore, those questions and those answers have been accurately transcribed, is that correct? A. Yes, sir.

Q. Now, starting with the questions appearing on the top of page 8:

"Q. Did you ever know she was arrested on 171st Street? A. That's right, but she was not a prostitute" and the next two questions that follow. Have you checked those questions and those answers with your notes? A. Yes.

2177 I did.

Q. And are they accurately transcribed? A. Yes, sir.

Q. And the questions that appear further down on page 7:

"Q. And did you sell the other two? A. One to Pauline Hillson",

and the next question and answer that follows.

Have you checked those questions and those answers with your notes? A. I did, but I want to find them now.

Q. Here they are right here. You have previously checked this entire statement? A. I have.

2178 Q. But you are checking each question as we go along here, is that right? A. Yes, sir.

Mr. Todarelli: Why take up the time of the jury then? It has been checked before and I assume she is going to testify that she checked it.

The Court: Can't you shorten it?

A. You checked this and you found this was an accurate transcript, is that correct? A. Yes, sir, except when I— when I didn't find it accurate, why, I—

Q. You have indicated it? A. —I have indicated it.

*F. R. Ginsburg, in Rebuttal for Gov't, Cross.*

Q. All right. Then take the questions on page 9 starting with the question, "The maid", and going down to all the questions on that page, when you compared them with your notes did you find that those questions and those answers had been accurately transcribed? 2179

Mr. Todarelli: I am prepared to concede, your Honor, that if this witness were further examined about all the passages that Mr. Hilly used in his cross examination of the defendant that she would testify she found them all accurate and so transcribed them.

The Court: Very well.

Mr. Hilly: In view of that stipulation by Mr. Todarelli, I will not pursue that examination any further. 2180

CROSS EXAMINATION by Mr. Todarelli:

Q. Mrs. Ginsburg— A. Yes, sir.

Mr. Todarelli: Are you through?

Mr. Hilly: No, just one minute, Mr. Todarelli.

By Mr. Todarelli:

Q. During the interview and the question and answer statement Mr. Wallace was present continuously, is that correct? A. Yes, sir. 2181

Q. And Mr. William J. Wilson, whom you have designated attorney for the witness,— A. Yes, sir.

Q. —was present, is that correct? A. Yes, sir.

Q. And Herbert Zelenko, attorney for Rose Sookerman, was present during the entire period in which you took the question and answer statement, is that correct? A. Yes, sir.

Q. And directing your attention to page 16 where between an answer and the next question appears the statement "Off the record"? A. Yes, sir.

*F. R. Ginsburg, in Rebuttal for Gov't. Cross.*

2182 Q. During that period Mr. Kay and Mr. Wallace and his attorneys were discussing things that you did not write in your book? A. Yes.

Q. And at any time when there was any "Off the record" discussion you have indicated it in this statement here, is that correct? A. Yes, sir.

Mr. Hilly: Now, I do not know whether—well, the first one I see is on page 16. The next one is on page 7, and that is all I see. I am now finished with Mrs. Ginsburg.

By Mr. Todarelli:

2183 Q. Mrs. Ginsburg, it was my pleasure to give you dictation at one time, was it not? A. Yes, sir.

Q. When I was an assistant in the office? A. Yes, sir.

Q. And there were times when you made an occasional mistake, weren't there? A. Yes, sir.

Q. You don't claim by any means to be a perfect stenographer, do you? A. Not infallible.

2184 Q. No. And is it not a fact, for example, that if I were to dictate the word "caught", let us say, and you understood it to be something else, that is, you understood it to be the word "ought" just to give an example, your stenographic notes would have the word "ought" and you would transcribe or typewrite the word "ought" on your paper, is that right? A. I would put down what I hear and transcribe it accordingly.

Q. What you hear? A. What I hear.

Q. In other words, if you don't hear everything correctly then the transcription is incorrect, too? A. Yes, or perhaps if I feel that I may not understand I would ask for it to be repeated.

*F. R. Ginsburg, in Rebuttal for Gov't, Cross.*

Q. Surely, but you dictate what you think— A. What I hear. 2185

Q. —is being said, is that right? A. Yes, sir.

Mr. Todarelli: That is all.

Mr. Hilly: I have no further questions. Thank you, Mrs. Ginsburg.

If your Honor pleases, at this time the Government has no further rebuttal witnesses.

The Court: Very well. The Government rests?

Mr. Hilly: The Government does rest, your Honor.

Mr. Todarelli: The defense does rest, your Honor, and perhaps I may say that at the end of the defense case—this will only take one minute—I did not renew the motions that I made at the end of the Government's case, and may all those motions, therefore, be considered to be renewed as at the close of the defense case? 2186

The Court: Yes, and the same ruling, Mr. Todarelli.

Mr. Todarelli: Thank you, sir.

The Court: And it will be assumed they were made in time. 2187

Mr. Todarelli: Thank you

The Court: That concludes the evidence?

Mr. Todarelli: Yes, sir.

Mr. Hilly: Yes, it does, your Honor.

The Court: Recess until tomorrow morning at 10:30.

(Adjourned to April 25, 1947, at 10:30 a. m.)

*Proceedings of April 23, 1947*

2188

New York, April 25, 1947

10:30 o'clock a. m.

(The following proceedings took place in the absence of the jury):

The Court: For the record. Under the settled rules of criminal procedure I am obliged before the Government starts to notify counsel what action I intend to take on the requests to charge. I will first take up the requests of the Government.

I will comply in substance with request No. 1 although in my own language.

2189

I will comply with request No. 2 in substance although in my own language.

I will comply in substance with request No. 3 although in my own language.

I will comply in substance with request No. 4 although in my own language.

I decline to charge as requested in request No. 5.

I decline to charge as requested in request No. 6.

2190

Now, as to request No. 7, which is in three paragraphs, I will comply in substance although in my own language with the first paragraph of request No. 7. I decline to charge as requested in the two remaining paragraphs.

I decline to charge as requested in request No. 8.

I decline to charge as requested in request No. 9, although I believe that in my own charge on circumstance evidence I have complied with the request in substance.

I decline to charge as requested in request No. 10.

I will comply in substance, although in my own language with request No. 11.

The same as to request No. 12.

I decline to charge as requested in request No. 13.



*Proceedings of April 25, 1947.*

I will comply with request No. 14.

2191

I will comply with request No. 15.

I will comply in substance, although in my own language,  
with request No. 16.

The same as to No. 17.

I decline to charge as requested in request No. 18.

I decline to charge as requested in request No. 19.

I decline to charge as requested in request No. 20.

I decline to charge as requested in request No. 21.

I will comply in substance, although in my own language,  
with request No. 22.

Now, as to the defendant's requests to charge, I will com- 2192  
ply with request No. 1.

I decline to charge as requested in request No. 2.

I will comply in substance, although in my own language,  
with request No. 3, request No. 4, request No. 5.

I decline to charge as requested in request No. 6.

I will comply in substance, although in my own language,  
with request No. 7 and request No. 8.

I decline to charge in the language as requested in request  
No. 9, although I believe that in my charge having to do  
with overt acts that the request is substantially granted.

I will comply in substance, although in my own language, 2193  
with request No. 10.

I decline to charge as requested in request No. 11.

I will comply in substance, although in my own language,  
with requests Nos. 12, 13 and 14.

I decline to charge as requested in request Nos. 15, 16, 17,  
and 18.

I will comply in substance, although in my own language  
with request No. 19.

I decline to charge as requested in request No. 20.

*Government's Requests to Charge.*

2194 (At this point the jury returned to the courtroom and the following proceedings took place in the presence of the jury):

The Court: You may proceed with the summations.

(Mr. Todarelli summed up the case to the jury on behalf of the defendant.)

The Court: We will take a recess for ten minutes.

(Short recess.)

(Mr. Hilly summed up the case to the jury on behalf of the Government.)

The Court: We will recess now until 2:45.

2195 (Recess to 2:45 p. m.)

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### GOVERNMENT'S REQUESTS TO CHARGE.

The Government respectfully requests this Honorable Court to charge as follows:

2196 1. It is not necessary for the Government to prove the guilt of the defendants beyond a possible doubt. If that were the rule, few men, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controversial fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof of the defendant's guilt be established beyond all reasonable doubt, not beyond all possible doubt.

2. A reasonable doubt of the guilt of the defendants is a doubt based on reason and which is reasonable in view of all the evidence; an honest, substantial misgiving, gener-

*Government's Requests to Charge.*

ated by insufficiency of proof. It is not a capricious or fanciful doubt suggested by the ingenuity of counsel or jury, and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the defendants to escape conviction, or prompted by sympathy for them, or those connected with them.

2197

3. While the accused, at the beginning of the trial, are presumed to be innocent, yet whenever proof shows beyond a reasonable doubt their guilt, then the presumption of innocence disappears from the case.

4. The phrase "interstate commerce" used in the Mann Act refers to a movement of persons as well as property, so that if you find that the defendants transported or caused to be transported or aided or assisted in obtaining transportation for or in transporting the girl, that would be a sufficient violation of the statute as far as "interstate commerce" is concerned.

2198

5. The purpose of the transportation which the statute condemns is the purpose and intent of the defendants and the defendants alone, and it is immaterial what the purpose of either the girl transported or the person actually doing the physical transportation was.

2199

6. In considering the purpose of the defendants in reference to the trips of the girl, the jury is at liberty to consider the business of the defendants and the business of the girl at the time the trips were made, and may also consider other previous relationships.

7. In a prosecution for the interstate transportation of a woman for an immoral purpose, the purpose of intent of the defendants is an essential ingredient of the charge.

*Government's Requests to Charge.*

2200 In order to prove intent, the Government is permitted to introduce evidence of other acts and doings of the defendants of a similar character in order to illustrate or establish the intent or motive in the particular act involved in the indictment.

The testimony of the witness Mary Smith was admitted for such purpose and such purpose alone. Therefore, in considering the testimony of Mary Smith, the jury should consider it only as it pertains to the question of the intent of the defendants.

2201 8. In a case of this kind, it is difficult or impossible to procure direct evidence of the intent of the defendants when they did certain acts alleged to constitute crimes. Thus, to prove any one of the offenses charged in this case, the intent alleged in the indictment must be shown, but direct testimony is not necessary to prove this intent. The intent with which an act is done is a state of mind which must be determined by reasonable inferences from the facts proved. It is obviously impossible to ascertain or prove directly what were the operations of the minds of the defendants in this case. You cannot see inside their skulls and know what their thoughts are now, and of course you cannot know what their thoughts were then. But you can judge intentions by conduct. You must therefore, rely in part on circumstantial evidence in determining the guilt or innocence of these defendants.

2202 9. Circumstantial evidence, when it is strong and convincing, is often the most satisfactory evidence from which conclusions as to the guilt or innocence of defendants can be drawn. It is legal evidence and a jury must act upon it as if it were direct, when it is satisfactory beyond a reasonable doubt.

*Government's Requests to Charge.*

10. It is the universal rule in the Federal Courts that defendants may be convicted on uncorroborated testimony of accomplices. 2203

11. In a prosecution under Section 399, Title 18, United States Code (White Slave Traffic Act), the Government need not offer any evidence that the defendants received any share of the earnings of the prostitutes. It needs only prove beyond a reasonable doubt that the defendants had the intent and purpose that the girl persuaded to travel interstate upon a common carrier should engage in the practice of prostitution or debauchery.

12. In a prosecution under Section 399, Title 18, United States Code (White Slave Traffic Act), the offense is committed by the defendants whether or not the girl persuaded to travel interstate upon a common carrier actually engaged in prostitution or debauchery, provided the defendants had the intent and purpose that the girl so persuaded should so engage in the practice of prostitution. 2204

13. In order for you to find the defendants guilty of the substantive crimes charged, or any of them, it is not necessary for you to find that they themselves actually performed each of the acts alleged. The law provides that one who knowingly aids or abets another in any manner in the commission of a crime is equally guilty with the principal in the commission of said crime, and is himself a principal, and may be charged directly with the commission of the crime as a principal and convicted upon such charge, although the evidence indicated that he aided and abetted in the commission of the crime. 2205

"Whoever directly commits any act, constituting an offense defined in any law of the United States, or aids,



*Government's Requests to Charge.*

2206

abets, induces, counsels, commands, or procures its commission, is a principal."

Section 550, Title 18, United States Code.

2207

14. For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of the criminal law of the United States is an offense of grave character which involves not only a plotting to subvert the law, but also the preparation of the conspirators for further criminal practices. It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Because of this the statute has made a conspiracy to commit a crime a distinct offense from the crime itself.

15. When men enter into an agreement or conspiracy to accomplish an unlawful end, they become agents for one another and the act of one in pursuance of the common purpose is deemed to be the act of all and to make all responsible for that act.

2208

16. "I do not mean to require of you a finding that all the parties at any one time should meet together and form an express agreement \* \* \*. Of course, I suppose that when men in fact enter into a plan of that character they do not expressly agree. Much is left to unexpressed understanding and it is not necessary that there should have been any moment in which all met and with any formal expression of words agreed upon a plan."

17. If the parties act together to accomplish something unlawful, a conspiracy is shown, even though the individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the other.



*Government's Requests to Charge.*

18. The evidence of previous good character which was adduced at the trial in behalf of the defendant Krulewitch is of itself sufficient to create a reasonable doubt in your minds as to his guilt. You are instructed to consider such evidence of good character together with all the other facts in evidence brought out at the trial in determining his guilt or innocence.

2209

19. You should specially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit, the temptation is strong to color, pervert or withhold the facts. The law permits a defendant at his own request to testify in his own behalf. The deep personal interest which every defendant has in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

2210

20. You are entitled to take into consideration a defendant's fraud in the preparation and presentation of his case, his fabrication and manufacture of evidence, subornation of perjury and the like. It is receivable against him as an indication that his defense is weak and unfounded and from that consciousness may be inferred the fact itself of the lack of truth and merit in the defense.

2211

21. Obviously the defendants have a very great interest in not being convicted of this crime and you must consider whether or not in their desire to escape the consequences of a conviction, they or any of them has testified to that which is false.

22. You are instructed that the question of possible punishment of the defendants, or either of them, in the

*Defendant's Requests to Charge.*

2212 event of conviction, is no concern of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendants solely upon the basis of such evidence. Under your oaths as jurors, you cannot allow a consideration of the punishment which may be inflicted upon the defendants, if they are convicted, to influence your verdict in any way.

2213

## DEFENDANT'S REQUESTS TO CHARGE.

The defendant respectfully requests the Court to charge as follows:

1. The defendant is presumed to be innocent of the crime charged against him until he has been proved to be guilty beyond a reasonable doubt.

2214

2. In this prosecution, the Court is not concerned with any unconventional relationship between the defendant and the witness Sorrentino. If the jury find that they had been living together, though not married, and that the trip to Florida was planned as an incident of such relationship, and for no other purpose, the defendant must be acquitted.

3. The statute upon which this prosecution is based is one regulating interstate commerce, not one regulating morals. Prostitution, as such, except as connected directly with interstate commerce, is not within the purview of the Act of Congress on which this prosecution is based.

4. It is incumbent upon the Government to establish beyond a reasonable doubt, that at the time the trip was

*Defendant's Requests to Charge.*

planned it was so planned for the purpose of having the witness Sorrentino engage in prostitution. 2215

5. If the defendant was actuated by a concern for the health of the witness Sorrentino and the trip was planned for such purpose alone, the defendant must be acquitted, even if she engaged in prostitution after her arrival in Florida.

6. Any intent which the witness Sorrentino may have had to engage in prostitution in Florida can have no bearing on the crime charged against the defendant. The only material inquiry relates to the defendant's intent and not to any intent on the part of the witness Sorrentino. 2216

7. If the trip to Florida were planned without any intent on the part of the defendant that the witness Sorrentino there engage in prostitution, no crime was committed by the defendant, no matter what may have occurred thereafter and no matter what activities she may have engaged in after she had arrived in Florida.

8. If the journey to Florida was not planned with the purpose and intent of having the witness Sorrentino there engage in prostitution, the defendant must be acquitted, even if the witness Sorrentino did engage in prostitution after her arrival in Florida. 2217

9. None of the overt acts charged in the indictment is itself an illegal or improper act, and the defendant may not be convicted therefore unless the jury find, beyond a reasonable doubt, that such acts were in furtherance of an unlawful conspiracy to transport the witness Sorrentino in interstate commerce for the purpose of prostitution.

10. The intent of the defendant in planning the trip to Florida can be determined only from circumstantial evi-

*Defendant's Requests to Charge.*

2218

dence. In considering such evidence, the jury must inquire whether the existence of an unlawful intent is consistent with all the facts proved, and they may not find the defendant guilty unless the evidence is of such a nature as to be consistent only with guilt and inconsistent with innocence.

11. Inferences may be drawn only from established facts; inferences may not be drawn from other inferences. Inferences may not be drawn from proof which is itself contradictory and uncertain.

2219

12. Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the jury to acquit the defendant.

13. Unless the jury find that the evidence unequivocally and definitely shows that the defendant wilfully and criminally intended to commit the crime charged, he is entitled to a verdict of acquittal.

2220

14. The burden is upon the Government to establish defendant's guilt beyond a reasonable doubt, and evidence of facts that are as consistent with innocence as with guilt will not sustain a conviction. Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilty, it is the duty of the jury to return a verdict of acquittal.

15. The testimony of the witness Sorrentino must be considered by the jury with great caution and must be subjected to the closest scrutiny, and unless the jury are convinced beyond a reasonable doubt of the truth of her testimony, the defendant should be acquitted.

16. If the jury find that the statement made by the witness Sorrentino to Mr. Trost, an agent of the Federal Bu

*Defendant's Requests to Charge:*

reau of Investigation, on December 9, 1941, was substantially correct, the defendant should be acquitted. 2221

17. In evaluating the testimony of the witness Sorrentino you should take into consideration her earlier record, her previous relationship with the defendant, her apparent desire to harm defendant; the fact that she admittedly made a false charge of intimidation against the defendant; her attempt to extort money from him; and any other facts which might affect the quality of her testimony, as well as inconsistent testimony on earlier trials.

18. If the jury are in doubt as to where the truth lies as between the testimony of the witness Sorrentino and her contrary statement to Mr. Trost, exonerating the defendant, the defendant is entitled to the benefit of that doubt and he must be acquitted. 2222

19. Evidence of the defendant's good character should be considered with the other evidence in the case and may create a reasonable doubt where otherwise no doubt might have existed. If, by virtue of such proof of good character, a reasonable doubt of defendant's guilt arises in the minds of the jury, the defendant should be acquitted. 2223

20. The defendant is on trial on certain specific charges. The jury may not find him guilty unless those charges are proven beyond a reasonable doubt, no matter how improper, or even reprehensible, the jury may consider defendant's conduct to have been in other respects.



## Charge of the Court.

2224 The Court: (Leamy, J.) Madam Forelady, ladies and gentleman of the jury:

This case is a prosecution originally brought by the United States of America against Alvin Krulewitch, alias Alvin Kay, alias Ben Gordon, and also against Rose Sookerman, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, on an indictment found against them by the Grand Jury of this court. However, the case against Rose Sookerman has been disposed of and she is not on trial, the defendant Krulewitch being the only one on trial in this case.

2225

The fact that the defendant Krulewitch is here under indictment and on trial is not to be taken against him. The indictment which has been found and on which he is being prosecuted is no evidence whatever of the guilt of the defendant. The indictment is simply an accusation which charges him with the offenses, and no member of the jury should be influenced in the least degree by the fact that the indictment was found by the Grand Jury.

2226

The indictment, as you know, is in three counts. The first count charges in substance that on or about the 20th day of October, 1941, the defendant Krulewitch unlawfully and wilfully and knowingly persuaded, induced and enticed one Elizabeth Mary Johnston to go from the State of New York to the State of Florida for the purpose of prostitution and debauchery, and for other immoral purposes with the intent and purpose that she should engage in the practice of prostitution and debauchery and in other immoral practices, and that he also knowingly caused, aided and assisted her to be transported as a passenger upon a common car.



*Charge of the Court.*

rier in interstate commerce from the City of New York 2227  
to the City of Miami, Florida.

The second count of the indictment charges in substance that on or about the 20th day of October, 1941, the defendant Krulewitch unlawfully, wilfully, knowingly and feloniously caused the girl Elizabeth Mary Johnston to be transported in interstate commerce by common carrier from New York City to Miami, Florida, for the purpose of prostitution, debauchery and other immoral purposes.

The third count of the indictment is known as the conspiracy count and this count charges in substance that beginning on or about the 15th day of September, 1941, the defendant Krulewitch and the former defendant Sookerman unlawfully, wilfully, and knowingly combined, conspired, confederated, and agreed together and with each other to execute a lease of certain premises in Miami, and that in the month of October, 1941, they combined and conspired to persuade, induce and entice the said Elizabeth Mary Johnston to go from New York to Miami for the purposes of prostitution, debauchery and other immoral purposes, and that they combined and conspired to transport and cause to be transported the said Elizabeth Mary Johnston in interstate commerce by common carrier from New York City to Miami, Florida, for the purpose of prostitution, debauchery and other immoral purposes. 2228 2229

The burden is upon the Government to make out and establish every essential element of its case in every respect as to each count, and that the Government must do beyond a reasonable doubt. You cannot find the defendant guilty unless from all the evidence you believe him to be guilty beyond a reasonable doubt. The presumption is

*Charge of the Court.*

2230 that the defendant is innocent, and you cannot find him guilty unless you are convinced that he is guilty beyond a reasonable doubt. The presumption of innocence means that you start in the trial of the case with the thought and belief uppermost in your minds that he is innocent and you should continue to have that thought and belief until there is sufficient evidence to convince you of his guilt beyond a reasonable doubt.

2231 A reasonable doubt does not mean a fancied doubt, but it means a doubt that is based upon reason and common sense, and which is reasonable in view of all the evidence. It is not the mere possibility of innocence or not such a doubt as may be found by traveling out of the case and searching for some possibility in the realm of pure conjecture. It is not such a doubt as one who is desirous of evading an unpleasant duty might groundlessly raise and encourage himself to entertain as an excuse for the non-performance of that duty.

2232 It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. If that were the rule few defendants, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controversial fact which by its nature is not susceptible of mathematical certainty. In consequence the law is that in a criminal case it is enough if proof of the defendant's guilt be established beyond a reasonable doubt and not beyond all possible doubt.

If after an impartial consideration of all of the evidence you can candidly say that you are not satisfied of

*Charge of the Court.*

the guilt of the defendant, then you have a reasonable doubt and you should find him not guilty, but if after such impartial consideration of all the evidence you can candidly say that you have an abiding conviction of the guilt of the defendant such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt and you should find him guilty. It goes without saying that no conviction can be based upon suspicion or conjecture however strong. A conviction can be based only upon actual proof of guilt beyond a reasonable doubt, otherwise the jury should acquit him.

2233

The credibility of witnesses and the weight to be given to their testimony are matters entirely for your determination. The law is that you are not bound to give the same weight or the same credit, or to have the same faith in the testimony of each witness, but you should give their testimony just such weight, just such credit, and have just such faith in it as you think it is fairly entitled to receive.

2234

You may consider the appearance of the witnesses on the stand, their candor or lack of candor, their feelings or bias if any, their interest in the result of the trial, if any, and also their opportunity for observation, their means of information, and the reasonableness of the stories which they tell, and believe as much or as little of the testimony of each witness as you think you should. You may believe it all, not believe any of it, or believe part and disbelieve part just as you think you ought to do.

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The defendant has introduced evidence tending to show that he has had a good reputation among the people in the community in which he has lived. What a person's

*Charge of the Court.*

2236 general reputation is for honesty and good character is evidence tending to show what his character is in that regard. What his character is, is a question of fact for you to decide on the evidence tending to show his general reputation. If you find that the defendant's character is good, that is a fact which you should consider tending to show that he would not be likely to commit the offenses charged against him.

2237 Evidence of good character may create a reasonable doubt in favor of the defendant, but whether it does or does not is a question entirely for your consideration and determination,

If after considering all of the evidence in the case, including the character evidence, you have a reasonable doubt as to the guilt of the defendant, you should acquit him; but if you believe beyond a reasonable doubt, that is a doubt based on reason, that he committed the offenses charged against him, you should convict him notwithstanding the evidence may satisfy you that he has always had a good reputation.

2238 The first count in the indictment charges a violation of Section 399 of Title 18 of the United States Code. This statute provides in substance:

That it shall be unlawful for anyone to knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or even aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate commerce for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person

*Charge of the Court.*

that such woman or girl shall engage in the practice of prostitution, or debauchery, or any other immoral practice whether with or without her consent, or to knowingly cause, or aid, or assist in causing such person or girl to go and to be carried or transported as a passenger upon the line or route of a common carrier in interstate commerce." 2239

The second count in the indictment charges a violation of Section 398 of Title 18 of the United States Code. This statute provides in substance:

"That it shall be unlawful for any person to knowingly transport, or cause to be transported, or to aid or assist in obtaining transportation for or in transporting in interstate commerce any woman or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practice, or to knowingly procure, or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining any ticket or tickets, or any form of transportation, or evidence of the rights thereto, to be used by any woman or girl in interstate commerce in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate commerce." 2240 2241



*Charge of the Court.*

2242

Under counts 1 and 2 it is the contention of the Government that the defendant Krulewitch persuaded and caused the girl, Elizabeth Mary Johnston, now known as Mrs. Sorrentino, to be transported in interstate commerce from the State of New York to the State of Florida for the purpose of prostitution, debauchery, or other immoral purposes.

2243

The prosecution under counts 1 and 2 is under what is commonly known as the Mann Act, or the White Slave Statute, and, as you know, these statutes have for their object the prevention of the interstate traffic of girls and women for the purpose of prostitution, or other immoral purposes. I think I am safe in saying to you that every decent American citizen is in full accord with the object of these statutes.

Prostitution is the practice of sexual intercourse between a man and woman outside of the marital relationship.

Debauchery consists of lewd and licentious and immoral performances.

2244

This defendant is on trial for the alleged violation of the statutes above mentioned, which relate to the transportation or causing to be transported in interstate commerce of girls for immoral purposes.

Did this defendant cause this girl to travel in interstate commerce for immoral purposes? In other words, did the defendant as charged in the first two counts of the indictment wilfully and knowingly cause to be transported, or did he aid or assist in obtaining transportation in inter-



*Charge of the Court.*

state commerce of the girl Sorrentino for the purpose of prostitution, debauchery, or other immoral purposes? 2245

The law is that any person who shall knowingly transport, or cause to be transported, or who even aids or assists in obtaining transportation for, or in transporting in interstate commerce any woman or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, is guilty of a crime. The gravamen of the offense is the interstate commerce feature.

Of course, this Court has no jurisdiction over local crimes of prostitution, for those matters are for the concern only of the courts of the State in which the act occurred, but, as I say, the nub of the offense is to knowingly transport, or cause to be transported, or even aiding or assisting the transportation in interstate commerce of a woman or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose. The crime is complete if those elements are established to your satisfaction beyond a reasonable doubt. 2246

There is no violation of the federal statute if a man takes a woman from one State to another and she prostitutes in the State to which he brings her unless his intention was to bring her to that State for an immoral purpose, or for the purpose of prostitution or debauchery. 2247

The intent plays an important part. You judge intent not only by what a person says but also by his acts and by his conduct, and by what occurred in the specific case, that is in the specific instance.

You are to deal with each of the counts of the indictment separately and you are to determine under counts 1 and 2

*Charge of the Court.*

2248 from the evidence here whether or not this defendant persuaded the girl Sorrentino to be transported, or even aided or assisted in obtaining transportation for her in interstate commerce for immoral purposes, debauchery, or prostitution. If he did he is guilty under counts 1 and 2. If he did not he is not guilty under those counts. In other words, if the defendant unlawfully, wilfully, knowingly, and feloniously persuaded this girl to be transported, or caused her to be transported, or even aided or assisted in obtaining transportation for her in interstate commerce for the purpose of prostitution, debauchery, or other immoral purposes, he would be guilty as charged in counts 1 and 2 even if the girl consented to make the trip, or even if she asked to go on the trip. Under these counts it is immaterial whether or not the girl made the alleged trip willingly. Her approval or acquiescence is not an issue in this case. The forbidden offense occurs upon the transportation in interstate commerce of the girl by the defendant for an immoral purpose, and the defendant is equally culpable whether the woman made the trip willingly, or even suggested or solicited such transportation.

2250 You are instructed that it is no issue in this case whether the girl prior to the transportation was or was not of chaste character, because the character of the woman transported is not material. Even if you should find that the woman was of unchaste character it would still be a violation of the statute if the defendant transported her in interstate commerce for the purpose of sexual immorality, because the statute prohibits the transportation in interstate commerce of any woman, or any girl, for any immoral purpose, and would apply even if the woman transported was a confirmed prostitute.

*Charge of the Court.*

2251

Also in order to find the defendant guilty under counts 1 and 2 you must find from the evidence that the purpose of the trip from New York to Florida was for immoral purposes, prostitution, or debauchery. If you find from the evidence that the interstate trip was planned and made for a legitimate purpose, then even though there was immorality involved the verdict of the jury should be not guilty. In other words, if the defendant had no intention of taking her from one State to another for immoral purposes there would be no crime, but if his intent was to take her from one State to another for immoral purposes, or prostitution, or debauchery, the crime would be complete, and the fact that this girl might have been a prostitute would make no difference. Any person who transports a woman or a girl in interstate commerce for immoral purposes whether she is a prostitute or not, or who aids or assists in obtaining transportation for her for the purposes of immorality, debauchery, or prostitution, is guilty of the offense.

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The statutes under which this defendant is indicted under counts 1 and 2 of the indictment makes the transportation, the causing of it, the aiding and obtaining, and the inducing and enticing of girls to go on interstate trips for immoral purposes a federal criminal offense. In enacting this statute Congress was regulating interstate commerce. The prostitution, debauchery, or other immoral acts named in the statute are beyond federal power when standing alone and unconnected with interstate commerce.

The intent to cause the girl to be transported in interstate commerce for immoral purposes must be proved beyond a reasonable doubt to have been in the mind of this defendant at the time the trip was made, because such a personal in-

*Charge of the Court.*

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tent is an indispensable element of the crime charged. It is not the act of illicit relationship, or immorality, or prostitution that is punishable, and it matters not what acts of impropriety or immorality the defendant committed, or caused or aided to be committed.

No conviction can be had under counts 1 and 2 unless it is proved beyond a reasonable doubt that these federal statutes have been violated, and these statutes are violated only by transporting, or persuading, inducing, or enticing girls to cross State lines for immoral purposes.

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You are instructed that in a prosecution under the White Slave Traffic Act the Government need not offer any evidence that the defendant received any share of the earnings of the girl. It need only prove beyond a reasonable doubt that the defendant had the intent and purpose that the girl persuaded to travel in interstate commerce, should engage in the practice of prostitution, or debauchery, because under the statute the offense is committed whether or not the girl persuaded to travel in interstate commerce actually engaged in prostitution or debauchery, provided the defendant had the intent and purpose that the girl so per-

2256

suaded should engage in the practice of prostitution. In other words, it is incumbent upon the Government to establish beyond a reasonable doubt that at the time the defendant took the witness Sorrentino from New York to Florida, if you so find, that he did so for the purpose of having the witness Sorrentino engage in prostitution, debauchery, or other immoral practices, because if the defendant was actuated by a concern for the health of the witness Sorrentino, and the trip was had for that purpose alone, the defendant must be acquitted even though the

*Charge of the Court.*

witness Sorrentino engaged in prostitution after her arrival in Florida.

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In other words, if the trip to Florida was made without any intent on the part of the defendant that the witness Sorrentino should engage in prostitution, debauchery, or other immoral practices, then no crime was committed by the defendant no matter what may have occurred thereafter, and no matter what activities she may have engaged in after her arrival in Florida.

The intent of the defendant can be determined only from the evidence, and in considering the evidence the jury should consider whether the existence of an unlawful intent is consistent with all the facts proved, and you may not find the defendant guilty unless the evidence is of such a nature as to be consistent only with guilt and inconsistent with innocence.

2258

The third count of the indictment is known as the conspiracy count and, as I have already told you, it charges in substance that the defendant Krulewitch and the former defendant, Rose Sookerman, alias Mickey Roberts, alias Pauline Hilson, alias Betty Gordon, entered into a conspiracy to persuade and induce the woman Johnston, now known as Sorrentino, to go from New York to Florida for the purpose of prostitution and debauchery, and that they conspired to transport her in interstate commerce by common carrier from New York to Florida for the purpose of prostitution, debauchery, and other immoral purposes.

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This count charges a violation of Section 88 of Title 18 of the federal statutes which provides in substance:



*Charge of the Court.*

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That it shall be unlawful for two or more persons to conspire to commit any offense against the United States provided one or more of such parties does an act to effect the object of the conspiracy.

In this count the defendant Krulewitch is charged with conspiring with the former defendant Sookerman to violate the statutes previously mentioned, namely, the so-called White Slave Act.

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A conspiracy is an agreement between two or more persons to do a particular thing or things which the law prohibits. The agreement may be either expressed or implied, a tacit understanding between the parties. The test is that the minds of the parties meet.

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A conspiracy may be proved by direct evidence, but as it is usually secret and difficult to discover, the law is that it is not necessary that it must be proved by direct evidence, but a conspiracy may be proved by the proof of facts from which you can fairly and reasonably infer that the claimed conspirators had a common object to attain, or by the proof of facts from which you can fairly and reasonably infer that the acts of each of them were done in pursuance of a common purpose calculated to effect that purpose, although such acts may be different in character. It should be made to appear that they steadily pursued the same object either acting separately or together by common or different means, but all leading to the same result.

Concurrence of action on the material points may be sufficient to enable you to presume concurrence of sentiment or intention, and from this you can find the fact, that there was a conspiracy, if you find that they pursued the same



*Charge of the Court.*

object over a period of time either in the same way or in different ways, one of them performing one or more acts and the other performing other acts with the intention of accomplishing the object which they were pursuing, and from which you can draw the conclusion and finding the fact that they had engaged in a conspiracy to effect that object.

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A good question to ask yourselves is this: Did they have a common purpose and did they pursue that purpose by common means whether acting separately or together?

A conspiracy may be shown as an independent fact by evidence either direct or circumstantial which has a tendency to show an agreement between the claimed conspirators. If you find the conspiracy established on that kind of evidence then the acts and declarations of each of the conspirators while pursuing their common object become the acts and declarations of all of them, for each is personally responsible for the acts and declarations of the other if performed or made in the furtherance of their common object.

2264

For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of the criminal laws of the United States is an offense of grave character which involves not only a plotting to subvert the law but also the preparation of the conspirators for further criminal practices. It is almost always characterized by secrecy rendering detection difficult and requiring much time for its discovery. Because of this the statute has made a conspiracy to commit a crime a distinct offense from the crime itself.

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As I have stated before, when persons enter into an agreement or conspiracy to accomplish an unlawful end, they

*Charge of the Court.*

2266 become agents for one another, and the act of one in pursuance of the common purpose is deemed to be the act of all and to make all responsible for that act. In fact, it is not necessary that the conspiracy should originate with the person charged. Everyone coming into a conspiracy at any stage of the conspiracy with knowledge of its existence is regarded in law as a party to all of the acts done by any of the parties before or afterwards in furtherance of a common design.

2267 The law is that there is no conspiracy unless one or more of the parties does an act to effect the object of the conspiracy. This is what is called in law an overt act.

The overt acts alleged in the indictment are that on or about October 1, 1941, the defendant Krulewitch had a conversation with one Cora Blunberg at Miami, Florida; that on or about the 15th day of October, 1941, the defendant Krulewitch and the former defendant Sookerman had a conversation with the girl Johnston, now known as Sorrentino; that on or about the 20th day of October, 1941, the defendant Krulewitch and the former defendant Sookerman rode in an automobile from 325 East 77th Street in the City of New York to Pennsylvania Station in the City of New York.

2268 An overt act is any act, whether innocent or criminal, committed by any one of the conspirators in furtherance of or to carry out the conspiracy. All of the conspirators, however, need not join in the overt act. Even though the overt act, if you find there was one, is done by one of the parties, it binds all parties in the conspiracy and completes the offense as to all. However, while an overt act done to effect the object of the conspiracy is essential to render a conspiracy punishable, yet such act need not be a criminal

*Charge of the Court.*

act, much less an act constituting the crime that is the object of the conspiracy. That is, the overt act in execution or furtherance of the conspiracy may be either innocent or criminal. You are instructed, however, that all the overt acts charged in the indictment need not be proved to sustain a conviction. If any one of them be proved beyond a reasonable doubt it is sufficient to make out the offense if it was in furtherance of an unlawful conspiracy. 2269

By the expression "circumstantial evidence", which I have used before, is meant the evidence of facts from which the existence of the principal fact may be inferred. It is a common matter in the trial of criminal cases to rely upon such evidence, and if it were not that the triers of the facts were able to judge of the truth from the surrounding circumstances, many crimes would go unpunished, and so here circumstantial evidence is legal and proper for you to consider as to all counts, and you may convict upon this class of evidence alone if thereby you are persuaded beyond a reasonable doubt of the defendant's guilt. But the circumstances must be proved beyond a reasonable doubt and must be such as will lead the guarded discretion of a just and reasonable person to the conclusion that the crime has been committed, and that the defendant is guilty of its commission. 2270 2271

You must be careful, therefore, not to indulge any inference or presumption that does not in your minds necessarily arise from the facts established by the evidence. Circumstantial evidence is entitled to the same weight as direct evidence provided it is of such a character as to exclude every reasonable hypothesis other than that the defendant is guilty. Therefore, as to circumstantial evidence,

*Charge of the Court.*

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if you can reconcile the evidence in this case upon any reasonable basis consistent with the defendant's innocence it is your duty to do so.

Circumstantial evidence may be of great value or little value depending upon whether or not the natural conclusions to be drawn from it are convincing or not. To convict on circumstantial evidence alone the chain of evidence should be complete. However, where circumstantial evidence is supported by other credible evidence then the matter stands differently.

2273

Now, to sum up briefly, the question for you to decide under counts 1 and 2 of the indictment is substantially as follows:

Did this defendant Krulewitch persuade the girl Sorrentino to go from New York to Florida for immoral purposes, prostitution or debauchery, and did he take her from New York to Florida for immoral purposes, prostitution, or debauchery? If he did he is guilty as charged in these counts. If he did not, then he is not guilty as charged in these counts.

2274

The question for you to decide under count 3 is this: Did this defendant Krulewitch conspire with the former defendant Sookerman to persuade the girl Sorrentino to go from New York to Florida for immoral purposes, prostitution, or debauchery, or did they conspire to transport her from New York to Florida for immoral purposes, prostitution or debauchery? If he did he is guilty as charged in this count. If he did not then he is not guilty.

If after considering all of the evidence in the case you have a reasonable doubt of the guilt of the defendant you

*Charge of the Court.*

should acquit him, but if you believe beyond a reasonable doubt that he committed the offenses charged against him, or any of them, you must convict him.

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If there is more than one theory in this case, and if they are each equally reasonable, one leading to guilt and the other to innocence, you must adopt the one leading to innocence, because it is safer and better to believe good of a person than to believe evil of him if you can do so on a basis which is consistent in view of all of the evidence in the case.

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not to be concerned. Whether offered evidence is admissible is purely a question of law and from a ruling on such a question you are not to draw any inference as to what weight should be given to the evidence, or as to the credibility of a witness. In admitting evidence to which an objection is made the Court does not determine what weight should be given to such evidence. As to any offer of evidence that was rejected by the Court, you of course must not consider that either. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection. The case is for you to decide upon the evidence and the evidence alone, and you must not be influenced by assumption, conjecture, sympathy, or by any inferences not warranted by facts proved to your satisfaction. Your oath sums up your duty, and that is that without fear or favor of any man you will well and truly try and true deliverance make between the defendant and

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*Exceptions.*

2278 the United States of America according to the evidence given you in court and the laws of the United States.

Take the case and consider it in view of its importance and the gravity of the charges made in the indictment. It is important to the public and it is also important to the defendant. You will not concern yourselves about the sentence for these offenses, because that is a matter for the Court and not for your concern.

Your verdict will be oral and will be either guilty or not guilty on each count and will be announced by your forelady when called upon to report for you.

2279 There were a great many exhibits introduced during the trial of the case. You are entitled to have any of them, or all of them in your juryroom during your deliberations.

I suggest that the Government exhibits be collected in one collection and the defendant's exhibits in another and be handed into the juryroom when the jury takes up the case.

Are there exceptions? If there are I will take them in chambers, Mr. Todarelli.

Mr. Todarelli: In chambers, your Honor?

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The Court: Yes.

Mr. Todarelli: All right, sir.

(The following proceedings occurred in chambers without the hearing of the jury):

Mr. Todarelli: We respectfully except to the charge of the Court that this defendant can be convicted if it is found that the girl was taken to Florida by him, or caused to be taken there for immoral purposes; on the ground that there is no evidence in the record that would indicate that the Government maintains that she was taken there for



*Exceptions.*

immoral purposes. The entire proof is that she was taken there for commercialized prostitution. 2281

And then we respectfully except to the refusal of the Court to charge, in the language or substance of requests numbered 2, 6, 9, 11, 15, 16, 17, 18 and 20. Those are the charges, you Honor.

Mr. Hilly: Would it be inappropriate or inopportune for me to ask, your Honor to charge that questions asked by counsel for both sides are indicative of no facts?

The Court: I do not think that is necessary.

Mr. Hilly: All right.

The Court: I think they understand that. 2282

Mr. Hilly: Then that is all. The charge to the jury is satisfactory then to the Government.

(The following proceedings occurred within the presence of the jury):

The Court: At this time the two alternate jurors are excused for the term. I am sure that I need not caution you that you are not supposed to discuss the case with anyone whether inquiry is made of you or not, as to how you think the case ought to be decided, and you are now excused.

The remaining jurors of course understand that until you report your verdict you will be in charge of an officer and you will not be permitted to separate of course. 2283

You may now retire and consider your verdict.

The Forelady: Your Honor, may we have the evidence, the exhibits?

The Court: Yes, all the exhibits will be given to the jury. (Whereupon at 3:40 p. m. the jury retired.)

(At 5:40 p. m. the following occurred):

The Court: For the record. Gentlemen, I have received this communication from the jury:

*Verdict.*

2284 "Your Honor, may the jury make a recommendation for leniency?" Signed "K. R. Swift."

And I intend to answer that yes.

(At 5:47 p. m. the following occurred):

The Clerk: The jurors will answer to their names as they are called.

(Names of jurors called and each juror responded as his or her name was called.)

The Clerk: Madam Forelady, has the jury agreed upon a verdict?

The Forelady: They have.

2285 The Clerk: How do you find?

The Forelady: We find the defendant guilty on the first two counts. We find the defendant guilty on the third count, but the jury would like to recommend leniency.

The Clerk: You find the defendant guilty on the third count, too?

The Forelady: Yes.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the defendant guilty on all three counts and so say you all with a recommendation of leniency?

2286 Jurors: Yes.

The Court: Thank you, ladies and gentlemen.

Mr. Todarelli: Pardon me. I ask that the jury be polled.

The Court: All right. The jury will be polled.

(Jury polled.)

The Court: Thank you, ladies and gentlemen, for your consideration of the case, and you are now excused from further consideration.

The Forelady: Your Honor, the jury has asked me to say to you that we considered it a privilege to sit with you.

*Motion to Set Aside Verdict.*

The Court: Well, thank you. That is very nice.

2287

(Jury excused.)

Mr. Todarelli: I move, your Honor, that the verdict be set aside as against the weight of the law and the evidence.

The Court: Motion denied.

Mr. Hilly: If your Honor pleases, the Government is not ready for sentence.

The Court: Not ready for sentence?

Mr. Hilly: Is not ready for sentence at this moment, because I have not been able to obtain a recommendation from the United States Attorney, and I did not speak to him in advance of the jury's verdict. If it would not inconvenience your Honor, or if your Honor would grant me a recess I could get a recommendation within four or five minutes, and then the Government would be ready to proceed with sentence if that would serve your Honor's convenience. 2288

The Court: I think you had better do it because I won't be here after tomorrow morning.

Mr. Hilly: Very well then, if your Honor will grant me that recess.

The Court: Short recess.

(Short recess.)

Mr. Hilly: If your Honor pleases, I do not want at this time to discuss any of the evidence in the case because your Honor is very familiar with the record, but I do want to make certain comments upon the trial of the case. 2289

I think that in my humble judgment the evidence in this case establishes that this man is a very vicious man and this was a very vicious crime, and that the jury by its verdict has indicated that when this man took the witness stand that they did not believe him.

*Discussion.*

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I further make the statement to your Honor that not only was he not worthy of belief on that witness stand but that he in fact committed perjury and did it deliberately. I have reference to his denial of knowing Rose Sookerman, or living with her at the Park Central Hotel, and that proposition was established beyond any doubt by those two witnesses Mátray and Culhane.

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Now, I am not going to discuss any of the other instances that I feel amounted to perjury, but I submit that that is one of the most glaring examples of perjury I have ever seen committed in any court, and it was done solely to mislead and confuse the jury. I think that is an element that your Honor should consider at this time.

The evidence shows that this man operated two ciber stubes in New York City, and his only purpose in operation of them was as fronts for houses of prostitution, and not only did he have the witness Sorrentino engaged in this activity but the defendant Rose Sookerman was so engaged.

2292

While I am on the question of perjury I refer your Honor to the affidavit that the defendant submitted in this court wherein he claimed that the witness made the signed statement, and while that fact was not brought before the jury it was before your Honor at the time that the motion to suppress was made.

I think that your Honor has given this man a very, very fair trial, and I think that there is no complaint whatsoever to be made with any of the conduct during the course of this case and, therefore, in view of all of the facts and in view of the recommendation of the jury the Government recommends that your Honor impose a sentence of four years.

The Court: There are three counts, Mr. Hilly.

*Discussion.*

Mr. Hilly: Yes, your Honor. We make a recommendation of four years on the first count and that your Honor suspend the imposition of sentence on counts 2 and 3 and place the defendant on probation for a period of two years to commence upon the service of the prison sentence imposed under count 1. 2293

The Court: What was the sentence imposed at the time of the conviction in the other case?

Mr. Hilly: At the time of the other conviction Judge Porterie imposed a sentence of three and a half years, and the recommendation was seven years, if your Honor please.

The Court: Was there a recommendation of leniency at that time? 2294

Mr. Todarelli: There was no recommendation of leniency.

The Court: I was going to say that with the recommendation of leniency you are now asking for four years?

Mr. Hilly: Yes, sir.

The Court: Do you wish to be heard, Mr. Todarelli?

Mr. Todarelli: Yes, sir, your Honor.

Mr. Hilly: One thing further, your Honor. In the trial before Judge Porterie it is significant to note that this defendant did not take the witness stand or commit any perjury. 2295

Mr. Todarelli: Your Honor, I am not going to comment upon the evidence, and I am not going to attempt to answer Mr. Hilly, because I think that possibly I am bound by the verdict of the jury who has found the defendant guilty. If they had believed him they would not have found him guilty, but I am going on the assumption in my plea to your Honor that the defendant is guilty, and I am going to point out he has had five and a half years during



*Discussion.*

2296 which he has done nothing but answer this case. The money that he was able to borrow from friends and relatives has all been poured into this case. He has not slept nights. His wife has worked to help support the family. They have two fine children, one 16 and one I think about 9 or 10. If he did make a mistake he certainly has paid for it and paid for it through the nose.

2297 He has been married since 1944. I have been to his house. I went there the other night to see what kind of a place he lives in, and he lives in a very modest apartment in a respectable section of town. His children go to a nice school. His wife is a Catholic and his children go to a parochial school although he is Jewish. I do not say that, your Honor, because your Honor is a Catholic. I merely point that out to indicate that if there was anything bad in his family life he has made an earnest effort to rehabilitate himself and in my opinion he has. If there was anything bad in this man's life it was because of his weakness for women, which I cannot condone under any circumstances. However, after all that this man has been through, your Honor, I think your Honor could well place him on probation for a long period of time.

2298 He is fifty years old. His mother is in the courtroom. His wife is in the courtroom and now they are the ones of course who will suffer more than he, but it seems to me, your Honor, that you could place him on probation for a long period of time so that we would be assured that he would behave himself, and I earnestly urge your Honor to do so.

The Court: Is there anything further, Mr. Hilly?



*Sentence.*

Mr. Hilly: No, your Honor. The Government has nothing further to add. 2299

The Court:: All right. Let the defendant be arraigned for sentence.

In this case the sentence of the Court is on count 1 that the defendant be confined to an institution to be selected by the Attorney General of the United States for a period of two years; on counts 2 and 3 sentence is suspended and the defendant is placed on probation for two years to take effect at the expiration of the sentence on count 1.

Do you wish bail pending the appeal, Mr. Todarelli?

Mr. Todarelli: Yes, sir. 2300

The Court: What was the last bail?

Mr. Todarelli: \$15,000. There are serious questions of law sir.

The Court: I think there are some questions.

Mr. Todarelli: Yes, there are.

The Court: I am prepared to admit him to bail pending the appeal.

Mr. Hilly: Well, of course, if your Honor pleases, the Government opposes that and takes the position that there is no question of law involved.

The Court: I will fix the same bail of \$15,000 pending appeal. 2301

Mr. Todarelli: Thank you, sir.

The Defendant: Thank you, your Honor.

Mr. Todarelli: Will your Honor parole him or continue the same bail? I do know if he has to rewrite a new bail bond.

The Defendant: No.

Mr. Todarelli: Or if any new bail is necessary.

*Notice of Motion.*

2302

The Court: I do not know. What is the custom here, Mr. Hilly?

Mr. Hilly: I think that a new bond has to be rewritten for bail pending the appeal.

Mr. Todarelli: I understand that the bonding company continues bail right up through all appeals.

The Defendant: That is correct.

Mr. Todarelli: That is my understanding.

The Defendant: Your Honor, it would be a terrific cost on me if I were to pay them another fee.

2303

The Court: I am ready and willing to continue the present bail.

Mr. Todarelli: Yes, sir.

The Court: If it is possible to do so.

The Defendant: It is.

Mr. Todarelli: And I assure your Honor that it is possible and the old bail does run until all appeals have been exhausted.

The Court: All right. He is released on \$15,000, the present bail.

Mr. Todarelli: Thank you, your Honor.

2304

**Notice of Motion.**

(Same Title.)

Sir:

PLEASE TAKE NOTICE that on the annexed petition of Alvin Krulewitch, duly verified the 26th day of August, 1947, and the affidavit of Joseph Lore, duly sworn to the 30th day of June, 1947, and upon all the proceedings here-

*Notice of Motion.*

before had herein, appellant will move this Court at a motion part thereof appointed to be held at the Court House, Foley Square, Borough of Manhattan, City and State of New York, on the            day of October, 1947, at 10:30 A. M. or as soon thereafter as counsel can be heard for an order remanding this cause to the United States District Court of the Southern District of New York, so that the same may be more particularly referred to the Hon. James P. Leamy, United States District Judge; so that defendant may apply to the said Court and the said judge for the following relief herein:

1. Granting defendant a new trial herein and setting aside the judgment of conviction herein entered in the office of the Clerk of this Court on or about the 26th day of April, 1947, and setting aside the verdict of the jury as returned herein on April 25th, 1947, upon which the aforesaid judgment of conviction was entered, on the ground of newly discovered evidence, from which it appears among other things that the defendant did not have and defendant was deprived of a trial by an impartial jury, as is made mandatory by the Sixth amendment of the Constitution of the United States, by reason of the fact that Katherine R. Swift, one of the jurors and forelady of the jury fraudulently concealed that she was an employee in the past, of the Government of the United States and falsely asserted and represented herself as being an employee in a stock-brokerage office.

2. Granting defendant a new trial herein and setting aside the judgment of conviction entered in the office of the Clerk of this Court on or about the 26th day of April,

2305

2306

2307

*Notice of Motion.*

2308

1947, and setting aside the verdict of the jury as returned herein on April 25th, 1947, upon which the aforesaid judgment of conviction was entered, on the ground of newly discovered evidence, from which it appears that the trial jury herein, sought instructions of the trial Court with respect to their deliberation and verdict and which request for instructions were never conveyed to the trial Court, but that instead, the jury received advice of and from the bailiff of the Court;

2309

and so that a judicial inquiry may be had herein and defendant afforded an opportunity to present proof and testimony in support of his aforesaid application, and/or such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: New York City, August 27, 1947.

Yours, etc.,

2310

JACOB W. FRIEDMAN,  
Attorney for Defendant-Appellant,  
Office & P. O. Address,  
170 Broadway,  
Borough of Manhattan,  
City of New York.

To:

Hon. John F. X. McGohey,  
United States Attorney,  
Southern District of New York.

## Petition, in Support of Motion.

(Same Title.)

2311

To the United States Circuit Court of Appeals, Second Circuit:

The petition of Alvin Krulewitch, respectfully alleges upon information and belief:

FIRST: That your petitioner is the person named as defendant in the above entitled proceeding, wherein in the United States District Court, Southern District of New York, a criminal indictment was returned against your petitioner on the 4th day of January, 1943, charging violation of Sections 398, 399 of the United States Code, Title 18:

2312

SECOND: That a fourth trial of said indictment was had at this Courthouse before District Judge John C. Leamy and a jury, on and between the 8th day of April, 1947, and the 25th day of April, 1947, when a verdict of guilty with recommendation of leniency was returned by said trial jury. Petitioner's customary motions to set aside the jury's verdict were denied by the Court, and the trial Court continued petitioner on bail pending appeal. At the time, the trial Court agreed that the case presented arguable questions of law.

2313

THIRD: Your petitioner now respectfully moves this Court and urges the granting of this application for remand to the District Court for consideration of a motion for a new trial upon either or all of the particular grounds enumerated in the annexed notice of motion, and as to each I will hereinafter separately elaborate:

*Petition, in Support of Motion.*

## AS TO GROUND No. 1

2314

"Granting defendant a new trial herein and setting aside the judgment of conviction herein entered in the office of the Clerk of this Court on or about the 26th day of April, 1947, and setting aside the verdict of the jury as returned herein on April 25th, 1947, upon which the aforesaid judgment of conviction was entered, on the ground of newly discovered evidence, from which it appears among other things that the defendant did not have and defendant was deprived of a trial by an impartial jury, as is made mandatory by the SIXTH AMENDMENT of the Constitution of the United States, by reason of the fact that KATHERINE R. SWIFT, one of the jurors and forelady of the jury, fraudulently concealed that she was an employee in the past, of the Government of the United States and falsely asserted and represented herself as being an employee in a stock brokerage office."

2315

2316

A) Since the completion of the trial of this proceeding, I have ascertained that on March 3, 1947, said Catherine R. Swift was duly sworn in by the Clerk of the District Court, as a juror therein for the next ensuing April, 1947 term of the Court. She swore therein, she was a "customer's broker" employed by Bendix, Luitweiler & Co., at No. 52 Wall Street, New York City. When she was seated as the perspective forelady of the jury and as a juror at this trial, said Catherine R. Swift was interrogated by my trial counsel Thomas Todarelli, Esq., who questioned her in regard to the aforesaid employment, whether she was employed as a customer's broker at that address with said



*Petition, in Support of Motion.*

firm, to which she replied "Yes." My said trial counsel further expressly questioned said Catherine R. Swift, whether she was ever employed by the Government or whether any of her relatives were ever employed by the Government, to both of said inquiries she replied "No." That this questioning occurred in the presence of the trial Court as well as in my presence. And, as the trial Court doubtless will recall, my trial counsel in like fashion asked of each and every prospective juror whether they or whether any of their relatives were ever employed by the Government.

2317

B) I have now ascertained that the aforementioned answers given by the forelady juror Catherine R. Swift were false and untrue. I have ascertained that she last was employed as a customer's broker by Bendix, Luitweiler & Co., early in the year 1941 when she left that employ and firm and that she became an employee of the United States Government in a highly confidential capacity in the year 1941 and that she was so employed until August of 1946.

2318

C) That had the said Catherine R. Swift not suppressed these vital facts neither my attorney nor myself would have permitted her to sit as a juror in this case and she would have been challenged for cause. My trial attorney never used up the ten challenges for cause allowed him by law but only used up six so that she could have been challenged and excused for cause.

2319

D) I respectfully submit and urge this Court that by reason of the foregoing, I was deprived of a trial by an impartial jury guaranteed me by the Sixth Amendment of the Constitution of the United States.

*Petition in Support of Motion.*

2320

## AS TO GROUND No. 2.

FOURTH: "Granting defendant a new trial herein and setting aside the judgment of conviction entered in the office of the Clerk of this Court on or about the 26th day of April, 1947, and setting aside the verdict of the jury as returned herein on April 25th, 1947, upon which the aforesaid judgment of conviction was entered, on the ground of newly discovered evidence, from which it appears that the trial jury herein, sought instructions of the Trial Court with respect to their deliberations and verdict and which request for instructions were never conveyed to the trial Court, but that instead, the jury received advice of and from the bailiff."

2321

FIFTH: Annexed hereto is the affidavit of one Joseph Lore, who, on April 25th, 1947, was a bailiff of this Court in whose care the jury was placed. He clearly asserts in his said affidavit, that on April 25th, 1947, while the jury was engaged in its deliberations, the jury requested further instructions of the trial Court with respect to their deliberations, that said Court bailiff instead of conveying said request to the trial Court, took it upon himself to give said jury its instructions.

2322

SIXTH: I am informed and which I believe to be true, that it was grossly improper for said Court bailiff to substitute himself in the place and stead of the trial Court. That the trial Court alone is empowered, only in the presence of my attorney and the Government Attorney, to receive requests of the jury and to give the jury instructions thereon, and that the same should and must be recorded in the trial minutes, and that, my attorney as is

*Petition, in Support of Motion.*

provided by law could have made application to the Court to give the jury further instructions in relation to their inquiry. 2323

SEVENTH: I verily believe therefore that in the light of such happenings this Court should grant my application to remand for consideration by the District Court of my motion for a new trial.

EIGHTH: I desire to reserve the right to raise in the District Court such other errors as may be available.

NINTH: I respectfully ask that the cause be remanded and referred back to the trial judge to the end that a judicial inquiry as to the matters raised may be had according to law. 2324

TENTH: A similar motion for this relief was made on or about July 7, 1947, and heard on August 5, 1947, by District Judge Porterie, who denied the relief solely on the ground that "Since there is an appeal pending in the Circuit Court of Appeals the Court is without jurisdiction." I am trying to remedy this deficiency by having the cause remanded for the purpose of this motion. Except as stated there has been no previous application for this relief. 2325

WHEREFORE, for all of the foregoing reasons and in the interests of substantial justice, I respectfully ask that this application be granted.

Dated: New York City, August 26, 1947.

ALVIN KRULEWITCH,  
Petitioner.

(Verified by Alvin Krulewitch, August 26, 1947.)

**Affidavit of Joseph Lore, in Support of Motion.**

2326

(Same Title.)

City, County and State of New York.

JOSEPH LORE, being duly sworn, deposes and says:

I am over the age of twenty-one years, a citizen of the United States of America and that in the month of April, 1947, I was a bailiff employed at the United States Courthouse for the Southern District of New York.

2327

In the month of April, 1947, I was in charge of the trial jury of the above entitled action before District Judge John C. Leamy and a jury at this Courthouse and in which case the jury returned with a verdict on the evening of April 25, 1947, at about 5:30 P. M.

2328

During the course of the aforesaid jury's deliberation said jury informed me that they desired further instructions of the trial Court with respect to their deliberations and with respect to their conclusions. I was informed by said jury at the time that they desired further instructions of the trial Court as to bringing in a divided verdict. I did not report this request of the jury to the trial Court but instead I thought it proper on my part that I could give them instructions as to that request and I thereupon informed the jury that they could not bring in a divided verdict but that they must bring in a unanimous verdict one way or the other. This occurred at about 5:00 P. M. of that day. I further informed the jury that it was unnecessary for me to deliver their request to the trial Court and I told them they could return to their deliberations.

As far as I know, the trial Court was never informed of this fact nor was the Assistant United States Attorney nor was defendant's attorney.

JOSEPH LORE

*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2329

Sworn to before me this  
30th day of June, 1947.

Maurice Smiley,

Attorney and Counsellor at law.

Commission expires March 19, 1949.

**Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.**

(Same Title.)

2330

State of New York,  
County of New York,  
Southern District of New York.

} ss. :

FREDERICK H. BLOCK, being duly sworn, deposes and says, I am an Assistant United States Attorney in and for the Southern District of New York, and in that capacity am in charge of this matter.

The appellant, who now moves for a remand, had been convicted on each of three counts of an indictment charging him with transportation of women in interstate commerce, in violation of Title 18, Section 398 and 399, United States Code, and with conspiracy so to do, in violation of Title 18, Section 88, United States Code, after a two-week trial before Honorable James J. Leamy, United States District Judge, and a jury. He was sentenced to two years and thereafter filed notice of appeal in this Court. His time to perfect his appeal is in abeyance pursuant to stipulation, pending the outcome of this application.

2331

*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2332

This application has been previously made twice, and not once, as the appellant erroneously states in his affidavit annexed to the moving papers. I am advised and verily believe that Judge Learned Hand passed upon the very grounds urged here on July 8, 1947 and decided adversely to the appellant.

2333

The present motion seeks a remand of this case to the District Court for the purpose of enabling the appellant to apply in that Court for a new trial on the basis of certain allegedly newly discovered evidence as follows:

1. On the ground that the forelady of the jury, which convicted the appellant, fraudulently concealed on her *voir dire* examination that she had been employed by the United States Government; and

2. On the further ground that a member of the jury during the course of the jury's deliberations had asked one of the bailiffs in charge of the jury whether or not the jury could bring in a divided verdict in a criminal case, and had received an affirmative answer.

2334

It is respectfully submitted that this Court should not exercise its discretion in favor of this appellant for the following reasons:

1. The alleged newly discovered evidence, as demonstrated in the accompanying memorandum of law, is not of such a nature as to warrant, if the remand were to be granted, the granting of a new trial by the District Court.

2. The likelihood of the appellant being able to substantiate in the District Court the irregularities described in the moving papers is so remote, as this affidavit here-



*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2335

matter demonstrates, that the requested remand would be an idle gesture.

3. The moving papers fail completely to establish diligence on the part of the appellant in discovering the alleged new evidence.

1. The lack of merit of this application as a matter of law is discussed in the accompanying memorandum of law.

2. The small likelihood that the appellant would be successful, if this remand were granted, in the District Court is clearly shown by the affidavit of Joseph Lore, verified September 25, 1947, annexed hereto and marked Exhibit "A", in which Lore completely recants his affidavit verified June 30, 1947, which is part of the moving papers in this motion.

2336

In his earlier affidavit Lore had stated that he had been one of the bailiffs in charge of the jury during the appellant's trial and that during the course of the jury's deliberations he had had an unauthorized conversation with a member of the jury. He stated that the jury had informed him that it desired further instructions from the trial Court in bringing in a divided verdict and that he had taken it upon himself to advise the jury that a unanimous verdict was required.

2337

In his affidavit annexed hereto, Lore distinctly and expressly repudiates his affidavit of June 30, 1947, and states not only that the incident described in his earlier affidavit never happened but that he engaged in no conversation whatsoever during the period of the jury's deliberations with any member of the jury.

*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2338

Lore goes further and explains in his affidavit that he deliberately committed perjury in his affidavit of June 30, 1947, at the express request and instance of the appellant.

The present position of Lore is corroborated by the affidavit of the juror with whom he is supposed to have had the unauthorized conversation, namely, Mrs. Kathryn R. Swift, whose affidavit, duly verified on September 17, 1947, is annexed hereto, made a part hereof and marked Exhibit "B".

2339

In connection with the other alleged ground on which the appellant seeks a new trial, namely, the claim that Mrs. Swift testified falsely on her *voir dire* examination, Exhibit G annexed hereto and made a part hereof shows that the Court reporter who was present at the time did not report Mrs. Swift's examination and has no recollection as to whether or not Mrs. Swift was asked any questions about Government employment. However, Mrs. Swift, in her affidavit above referred to, denies that she was asked any such questions; she had, of course, been employed by the Government, in the Office of Censorship, from December,

2340

1941, to September, 1945. She states, however, that this service with the Government in no way influenced her verdict, which was based solely on the evidence adduced at the trial.

Also annexed hereto, made a part hereof, and marked Exhibit "D", is a photostatic copy of a letter from the judge who presided at the trial. There Judge Leamy states that he has no recollection that Mrs. Swift was ever asked about Government employment and that he has no doubt that had

*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2341

she been asked about the matter she would have answered truthfully.

It is interesting to note in light of the charge of subornation of perjury contained in Lore's affidavit, that the appellant's own affidavit on this motion is contradicted by documentary evidence. He states there that on her *voir dire* examination Mrs. Swift was asked about her employment and answered that she was employed by a customers' broker in Wall Street. This is flatly contradicted not only by Mrs. Swift's own affidavit which states that she was employed by a magazine at the time of the trial, but by her "wheel-card"; which is annexed to Exhibit "E" hereof.

2342

As against this evidence which tends to show that Mrs. Swift did not falsify on her *voir dire* examination and that the appellant's recollection on the point is untrustworthy, to say the least, the moving papers consist of mere assertions by the appellant, unsupported by any other evidence. In this connection, in addition to questioning Mrs. Swift, Judge Leamy, the reporter and the Clerk of the part (see Exhibit E) as to their recollection of Mrs. Swift's *voir dire* examination, I also questioned counsel for the Government and the defendant, the Special Agent of the F. B. I. who assisted counsel for the Government at the trial, and all of the jurors, including the alternates, who were selected in this case. I am convinced as a result of my investigation that if a hearing were to be held on this point, the appellant would be utterly unable to establish his charge of false swearing on the part of Mrs. Swift.

2343

On the second point, the unauthorized communication between the bailiff and the jury, the moving papers consist solely of Lore's perjurious affidavit.

*Affidavit of Frederick H. Block, in Opposition to  
Motion for Remand.*

2344

The foregoing demonstrates beyond any question, it is submitted, that the appellant's alleged new evidence is unworthy of belief and that it is unlikely in the extreme that he would be able to substantiate the claims set forth in the moving papers if this case were to be remanded.

2345

3. The moving papers fail entirely to adduce proof of diligence on the part of the appellant. There is no showing whatsoever to explain why the alleged false swearing of Mrs. Swift on her *voir dire* examination was not brought to the attention of the trial Court, and in connection with the alleged irregular conduct of Lore, the appellant likewise fails to explain the circumstances which brought Lore's alleged misconduct to his attention. This omission would seem to be particularly significant in the light of Lore's second affidavit, wherein Lore accuses the appellant of subornation of perjury.

WHEREFORE, deponent respectfully prays that the instant motion be denied in all respects.

FREDERICK H. BLOCK.

2346

Sworn to before me this

3rd day of October, 1947.

Daniel Tanenbaum,

Notary Public in the State of New York.

Residing in Kings County,

Kings Co. Clk's No. 253, Reg. No. 187-T-9.

Certificates Filed in

N. Y. Co. Clk's No. 181, Reg. No. 304-T-9.

Bronx Co. Clk's No. 13, Reg. No. 81-T-9.

Commission Expires March 30, 1949.

*Exhibit A annexed to Affidavit of Frederick H. Block, etc.*

## EXHIBIT A.

2347

## UNITED STATES CIRCUIT COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,

v.

ALVIN KRULEWITCH.

Affidavit.

C 113-388

State of New York,  
County of New York,  
Southern District of New York. } ss.:

2348

JOSEPH LORE, being duly sworn, deposes and says:

JL

I was employed as a bailiff in this Court from April, 1945 until June 30, 1947 in the United States District Court for the Southern District of New York and I served in that capacity at the trial of the defendant above named which was held in the United States District Court for the Southern District of New York during the month of April, 1947, before the Honorable James J. Leamy and a Jury.

I have made an affidavit in this matter which was verified on June 30, 1947 and which, I have been informed, has been submitted by defendant Krulewitch on a motion which he is making in this Court for a new trial. The matters set forth in that affidavit in so far as they relate to my advising the Jury orally in answer to their question, that they would have to bring in a unanimous verdict, is entirely false and I make that statement after having been advised of my constitutional rights against self-incrimination and know-

2349



*Exhibit A annexed to Affidavit of Frederick H. Block, et*

2350

ing that on the basis of this statement, I can be prosecuted for perjury.

The true facts as to what took place with respect to my contacts with the jury during the trial of Krulewitch are as follows:

2351

To the best of my recollection, I was sworn in with Mrs. Mahoney, another bailiff, to take charge of the jury during the period of its deliberations. Together with Mrs. Mahoney, I took charge of the jury until it returned with its verdict. At no time during the period of the jury's deliberations did I have any conversation of any nature or description with any member of the jury, with one exception. That exception occurred in connection with a request for instructions which the jury desired to send to the Judge in the course of its deliberations. The forelady of the jury knocked on the door, I opened it, she handed me a sealed envelope and asked me if I would take it to the Judge. I replied that I would and I thereupon immediately delivered the sealed envelope to the Judge. I repeat that aside from this conversation, I had no other conversation with any members of the jury in the recent case tried

2352

against Alvin Krulewitch.

The circumstances which led to my furnishing Krulewitch with my affidavit of June 30, 1947, which I am now repudiating, were as follows:

About two or three weeks after the trial had been concluded, Krulewitch met me in this Court House and told me that he had been talking to the Forelady of the Jury and that she was with him one hundred percent, and would do anything to get him a new trial. He asked me if I would



*Exhibit A annexed to Affidavit of Frederick H. Black, etc.*

sign an affidavit for him. He did not tell me what he wanted in the affidavit, but merely asked me if I would give him an affidavit to help him get a new trial. I told him that this was my job, and that I was working here steadily, and that I would not sign any affidavit.

2353

I did not see Krulewitch again until June 29th, at which

31.  
again

time I saw him in this building. At that time he asked me if I would sign an affidavit. He told me that the Forelady had given him an affidavit and held in his hand a typewritten sheet of paper. I did not read the paper. However, Krulewitch told me that, in this affidavit, the Forelady had stated that during the Jury's deliberations she had opened the door and asked me whether the Jury could

2354

namely  
bring in a divided verdict, whether the Jury could vote

31L

8 for conviction and 4 to acquit Krulewitch, and that, in this affidavit the Forelady stated that I had orally advised her, without consulting the Judge, that the Jury's verdict must be unanimous.

Krulewitch asked me if I would sign an affidavit to this effect. I told him that no such incident had happened, and that if I did sign such an affidavit, it would be untrue. Krulewitch said: "Never mind. They will never know." I told Krulewitch that I was losing my job the next day because there was no further money to pay the Bailiff. He said to me: "Don't worry. You'll be well taken care of; don't worry." I then told him that I would sign the affidavit. He, thereupon, left.

2355

*Exhibit A annexed to Affidavit of Frederick H. Block, et al.*

2356

On June 30th, Krulewitch met me in the Court House and asked me was it all right for him to get the affidavit, and I said:

"Yes. Bring it back around 3:00 o'clock and I will go with you to your lawyer and sign it."

He went away and came back at 3:00 o'clock, and then we went over to the Supreme Court Building and he introduced me to some fellow he said was his lawyer, and he said: "Sign that." And I signed it.

2357

After I had signed the affidavit in the Supreme Court House, Krulewitch again repeated to me that he would take care of me, and not to worry, and I gave him my telephone number.

I have not seen nor heard from Krulewitch since that time (June 30, 1947) nor did I receive any money at any time in connection with this whole matter.

I make this affidavit voluntarily. No threats nor promises have been made to me by anyone. I have been advised that anything that I say in this affidavit might be used against me in a subsequent criminal prosecution for perjury.

2358

I have read this affidavit, consisting of five pages and have placed my initials on the bottom of each page as finished reading that particular page.

This affidavit was dictated in my presence and I had opportunity to and did make corrections, and before signed the affidavit it was read over to me by Assistant United States Attorney Frederick H. Block.

JOSEPH LORE

*Exhibit B annexed to Affidavit of Frederick H. Block, etc.*

Sworn to before me this  
25th day of September, 1947.

2359

Louis Brickman,

Notary Public, State of New York.

Residing in N. Y. Co. No. 329, No. 1208B-0

Commission Expires March 30, 1949.

True & Correct Copy  
by R. P. H.

EXHIBIT B.

2360

CIRCUIT COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,

Appellee,

v.

ALVIN KRULEWITCH,

Appellant.

Affidavit  
C 113-388

State of New York,

County of New York,

Southern District of New York.

2361

KATHRYN R. SWIFT, being duly sworn, deposes and  
says:

I reside at 14 East 60th Street, New York City, and  
served as Juror No. 1 in the trial of the above case, which  
was held in the month of April, 1947, before the Honorable  
James P. Leamy, United States District Judge.

*Exhibit B annexed to Affidavit of Frederick H. Block,*

2362

I recall very definitely that when I was interrogated at the *voir dire*, I was not asked whether I had ever been employed by the U. S. Government. In this connection, I might say that during the period from December 1941 to September 1945 I was employed as a civilian, with temporary Civil Service Status in the Office of Censorship of the United States Government in New York City, and had I been asked I would have had no hesitation about disclosing that I had been so employed because I have a very definite feeling of pride in that work, which I felt was my contribution to the war effort of my country. I have never

2363

been employed by the U. S. Government except as aforesaid.

I may say further that at the time of my interrogation *voir dire* I was on leave from "Gourmet" Magazine and so stated. My employment with Bendix, Luitweiler & Co., a New York Stock Exchange house had been terminated in December 1941.

2364

I might add, that the fact that I had served with the Government, in no way influenced my verdict in the case which was based solely on the evidence which was adduced at the trial.

I have been informed that the bailiff who had the jury in custody during its deliberations has made an affidavit to the effect, that the jury had asked him orally after it retired to deliberate on its verdict whether or not a divided verdict could be brought in in a criminal case, and that he had advised the jury that a unanimous verdict was necessary.

Nothing of this kind occurred. With the exception of one occasion, when I handed a note in writing to the

*Exhibit B annexed to Affidavit of Frederick H. Block, etc.*

bailiff with the request that he deliver the same to the Judge, there was no communication whatsoever, during the period of the jury's deliberations, between the jury, or any member thereof, with any bailiff or as a matter of fact with any person whatsoever who was not a member of the jury. In the note which I sent to the Judge, the jury asked whether or not it could recommend leniency. When I handed the note to the bailiff, I had no conversation with him beyond, possibly, asking him to deliver the same to the Judge.

2365

KATHRYN R. SWIFT.

2366

Sworn to before me this

2nd day of October, 1947.

Daniel Tanenbaum,

Notary Public in the State of New York

Residing in Kings County

Kings Co. Clk's No. 253, Reg. No. 187-T-9

\* Certificate Filed in

N. Y. Co. Clk's No. 181. Reg. No. 304-T-9

Bronx Co. Clk's No. 13. Reg. No. 81-T-9

Commission Expires March 30, 1949.

2367

*Exhibit C annexed to Affidavit of Frederick H. Block, et al.*

2368

## EXHIBIT C.

UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,	}	Affidavit.
Appellee,		
v.		
ALVIN KRULEWITCH,		
Appellant.		

2369 State of New York,  
County of New York,  
Southern District of New York. } ss.:

MAURICE D. FLYNN, being duly sworn, deposes and says:

For some years I have been one of the official Court Reporters in and for the Southern District of New York. I was present in my official capacity at various stages of the trial of the above-named appellant, which took place during the month of April, 1947, before the Honorable James Leamy, United States District Judge, and a jury.

2370 I was present during the entire examination of the jurors *on voir dire*, but, since it is not the custom or practice for the reporter to record the examination of the jurors *on voir dire*, unless requested to do so by counsel (except in capital punishment cases), I did not report those proceedings in full, and my notes contain nothing with respect to examination of Mrs. Kathryn R. Swift *on the voir dire*.

I have been asked whether or not Mrs. Swift was asked any questions in the course of her interrogation on the



*Exhibit C annexed to Affidavit of Frederick H. Block, etc.*

...regarding employment with the United States Government. I have no recollection whatsoever on this point.

2371

MAURICE D. FLYNN.

Sworn to before me this

1st day of October, 1947.

Daniel Tanenbaum,

Notary Public in the State of New York,

Residing in Kings County.

Kings Co. Clk's No. 253, Reg. No. 187-T-9.

Certificate filed in

N. Y. Co. Clk's No. 181, Reg. No. 304-T-9.

Bronx Co. Clk's No. 13, Reg. No. 81-T-9.

Commission expires March 30, 1949.

2372

2373

*Exhibit D annexed to Affidavit of Frederick H. Block.*

2374

## EXHIBIT D.

## UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

Rutland, Vt.

CHAMBERS OF

JAMES P. LEAMY

DISTRICT JUDGE

SPECIAL DELIVERY

September 15, 1945

2375

Hon. John F. X. McGohey,  
United States Attorney,  
United States Court House,  
Foley Square,  
New York 7, New York.

Dear Mr. McGohey:

*In Re: United States vs. Krulewitch.*

Your file FHB-87606A-C 113-388.

Replying to your letter of September 12.

2376

I have no recollection at all that Mrs. Swift, the fore-  
lady of the Jury, was asked whether or not she had ever  
been employed by the United States Government. I do re-  
call that she stated that she worked for the magazine  
which you mentioned in your letter, and that there was  
some comment, especially on my part that I had never  
heard of the magazine.

Mrs. Swift struck me as being a highly competent and  
honorable person, and I am sure that if she was asked  
whether or not she had ever been employed by the Go-  
vernment, she would have answered truthfully.

Very truly yours,

JAS. P. LEAMY

*Exhibit E annexed to Affidavit of Frederick H. Block, etc.*

## EXHIBIT E.

2377

UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,

Appellee,

v.

ALVIN KRULEWITCH,

Appellant.

} Affidavit.

State of New York,

County of New York,

Southern District of New York.

} ss.:

2378

WILLIAM LEARY, being duly sworn, deposes and says:

I am a Deputy Clerk in and for the United States District Court for the Southern District of New York and in that capacity was present during the trial of the above named appellant, which took place in the United States District Court for the Southern District of New York during the month of April, 1947, before the Honorable James J. Leamy, United States District Judge, and a jury.

2379

Attached hereto and made a part hereof is a photostatic copy of a card bearing the name of Mrs. Kathryn R. Swift. I drew this card, commonly called a "wheel card" in connection with empaneling a jury in the aforesaid trial and this resulted in Mrs. Swift being seated in the jury box. My attention has been called to the words written in longhand on the card and I can state positively that those changes had been made on the card at the time that I drew it from the wheel as aforesaid. In other words, the card annexed here-

*Exhibit E annexed to Affidavit of Frederick H. Block, et*

2380 to is the same in all respects as the card which I drew from the wheel, as aforesaid.

I have been asked whether or not Mrs. Swift in the course of her interrogation on the *voir dire* was asked any questions regarding past employment by the United States Government. To the best of my recollection, Mrs. Swift was not asked any questions along that line.

WILLIAM LEARY

Sworn to before me this

1st day of October, 1947.

2381

Daniel Tanenbaum,

Notary Public in the State of New York.

Residing in Kings County.

Kings Co. Clk's No. 253, Reg. No. 187 T 9.  
Certificates Filed in

N. Y. Co. Clk's No. 181, Reg. No. 304 T 9.

Bronx Co. Clk's No. 13, Reg. No. 81 T 9.

Commission Expires March 30, 1949.

Name Mrs. Kathryn R. Swift

2382 Residence 149 W. 58th St. N. Y. N. Y.

32 Wall St. N. Y. N. Y.

Business Address Bendix, Luitweiler & Co.

Occupation Customer's Broker

Former Occupation 728 5th Ave.

Husband's Occupation Gourmet Magazine.

FBI INC - LK - 44-40 - 5M - 825-100

S 10-7-41

E 12-7-43

E NOV 18 1946

S APR 1 1947

**Decision:****UNITED STATES CIRCUIT COURT OF APPEALS**

2383

**SECOND CIRCUIT**

United States Courthouse

Foley Square

NEW YORK 7

ALEXANDER M. BELL

Clerk

October 10, 1947

**UNITED STATES**

vs.

**KRULEWITCH**

2384

Dear Sirs:

The Court has today handed down a decision in the above-entitled cause on motion (See below):

Very truly yours,

ALEXANDER M. BELL,

Clerk.

MOTION DENIED, BUT IF LEAMY, J., AFTER HEARING AND CONSIDERATION SEES FIT TO REQUEST THAT THE CAUSE BE REMANDED TO HIM, SUCH A REQUEST WILL BE GRANTED. HOWEVER, THIS APPLIES ONLY TO THE POINT OF THE SUPPOSED COMMUNICATION OF THE BAILIFF WITH THE JURY.

2385

L. H.

T. W. S.

H. B. C.

October 10, 1947

**Notice of Motion, Dated November 14, 1947.**

(Same Title.)

2386

SIR:

2387

PLEASE TAKE NOTICE that upon the annexed affidavit of JACOB W. FRIEDMAN, duly sworn to the 14th day of November, 1947, and on the motion papers heretofore filed in the Circuit Court of Appeals, Second Circuit, which are hereby incorporated herein, and on all the proceedings heretofore had herein, defendant will move this Court, pursuant to the permission granted by the Circuit Court of Appeals, Second Circuit, at an agreed term of this Court for the hearing of motions, to be held before the Hon. John C. Leamy, United States District Judge, at the Federal Court House, in Rutland, Vermont, on the 17th day of November, 1947, at 4:00 P. M., or as soon thereafter as counsel can be heard, for an order granting defendants, so far as is legally permissible, all of the relief referred to in the aforesaid incorporated motion papers, and directing a judicial inquiry and hearing and an opportunity to defendant to present the proof and testimony in support of his application, in the Southern District of New York and at such other place or places as may be proper, to the end that defendant's application for a new trial may be granted, and for such other, further and different relief as to the Court may seem just and proper in the premises.

2388

Dated: New York City, November 14, 1947.

Yours, etc.,

JACOB W. FRIEDMAN  
 Attorney for Defendant,  
 Office & P. O. Address,  
 170 Broadway,  
 Borough of Manhattan,  
 City of New York.



*Affidavit of Jacob W. Friedman, in Support of Motion.*

2389

To: Hon. John F. X. McGohey,  
United States Attorney,  
Southern District of New York.

**Affidavit of Jacob W. Friedman, in Support of Motion.****UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK.**

(Same Title.)

State of New York,  
County of New York,  
Southern District of New York. } ss.:

2390

JACOB W. FRIEDMAN, being duly sworn, deposes and said:

I am the attorney for defendant herein, am familiar with the facts and prior proceedings, and submit this affidavit in support of defendant's motion.

I hereby incorporate by reference with the same force and effect as though herein again set forth at length all of the papers on a motion made in the Circuit Court of Appeals, which papers were served on the United States Attorney on August 27, 1947.

2391

On that motion, as this Court is doubtless aware, the Circuit Court of Appeals permitted a limited remand for the purpose of considering one of the questions raised by the motion, namely, the matter of the unauthorized communication by the bailiff with the jury.

*Supplemental Affidavit in Opposition to Motion for  
Remand.*

2392

The purpose of the present motion papers is to provide a formal record of the motion.

WHEREFORE, on all of the grounds set forth in the aforesaid original papers, I respectfully ask that defendant be granted the relief sought.

JACOB W. FRIEDMAN.

Sworn to before me this  
14th day of November, 1947.

Max Spivak,

2393

Attorney and Counsel At Law,

In the State of New York Exercising

The Powers of a Notary Public.

Residing in Bronx County.

Office & P. O. Address, 170 Broadway, N. Y. C.

Bronx Co. Clk's No. 30 Reg. No. A-663-S-8.

N. Y. Co. Clk's No. 230 Reg. No. A-1845-S-8.

Kings Co. Clk's No. 158 Reg. No. A-1223-S-8.

Commission expires March 30, 1948.

2394 **Supplemental Affidavit in Opposition to Motion for  
Remand.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

V

(Same Title.)

State of New York,

Southern District of New York. } ss.:

FREDERICK U. BLOCK, being duly sworn, deposes and says: I am an Assistant United States Attorney

*Supplemental Affidavit in Opposition to Motion for  
Remand.*

2395

and for the Southern District of New York, and in that capacity am in charge of this matter.

This affidavit supplements my affidavit verified, October 3, 1947, which was filed in the Circuit Court of Appeals for the Second Circuit in opposition to the appellant's motion for remand.

In connection with the appellant's claim that there was an improper communication between the bailiff, Joseph Lore, and the jury during the period of the jury's deliberations, I questioned Mrs. Swift, all of the other members of the jury, and Mrs. May Mahoney of 204 West 83rd Street, New York City, who, with Lore was in charge of the jury during its deliberations. I am convinced as a result of this investigation that if a hearing were to be held, Krulewitch would be utterly unable to establish that Lore had the communication with jury described in the moving papers.

2396

FREDERICK H. BLOCK,  
Assistant U. S. Attorney.

Sworn to before me this  
day of November, 1947.

2397

Daniel Tanenbaum,

Notary Public in the State of New York.

Residing in Kings County.

Kings Co. Clk's No. 253, Reg. No. 187-T-9.

Certificate Filed in

N. Y. Co. Clk's No. 181, Reg. No. 304-T-9.

Bronx Co. Clk's No. 13, Reg. No. 81-T-9.

Commission expires March 30, 1949.

**Hearing of November 17, 1947.**

2398

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK.**

**UNITED STATES OF AMERICA,**

**vs.**

**ALVIN KRULEWITCH.**

Indictment C-115

**Appearances:**

Frederick H. Block, Esq., Ass't. U. S. Attorney for Southern District of N. Y.

2399

Lawrence C. Jones, Esq., Rutland, Vt. and Jacob W. Friedman, Esq., 170 Broadway, New York City, Attorneys for Defendant.

Hearing on Motion at Rutland, Vermont, November 17, 1947 at 4 p. m. before the Honorable James P. Leamy, United States District Judge for the District of Vermont.

Katharine A. Gardner,  
Court Reporter,  
309 Federal Building,  
Burlington, Vermont.

2400

Mr. Jones: May my name be entered as attorney for the respondent?

The Court: Yes.

Mr. Jones: And may I present Jacob W. Friedman of the New York Bar, who will argue the motion.

The Court: Yes, and enter the appearance of Mr. Block.

Mr. Block: Frederick H. Block, Assistant United States Attorney for the Southern District of New York.

Mr. Friedman: I assume at the outset Your Honor is designated for the Southern District and authorized to hear the present application?

*Argument on Motion.*

2401

The Court: I have an order of the Circuit Court of Appeals which was sent to me from New York which reads as follows: "A motion having been made herein by counsel for the appellant to remand the case and for other and further relief, upon consideration thereof it is ordered that said motion be and it hereby is denied, but if Leamy, J. after hearing and consideration sees fit to request that the cause be remanded to him, such a request will be granted. However, this applies only to the point of the supposed communication of the bailiff with the jury". If that is an assignment, I have it.

2402

Mr. Friedman: I would like to note on the record that my submission of the present application to Your Honor is without prejudice to the defendant to expand the irregularity of that as an assignment or designation, with all respect to Your Honor.

The Court: That I suggest is a matter for you to take up with the Circuit Court of Appeals.

Mr. Friedman: I appreciate that but I wouldn't want at any time hereafter to be confronted with the suggestion I waived any right that the defendant might have in the premises.

2403

The Court: All right.

Mr. Friedman: In view of the limitation of the hearing, I would like to have it noted I do not, by making the present application, waive the right hereafter to raise at some appropriate forum the other matters that were embraced in my application to the Circuit Court. As far as the present hearing is concerned, may I ask whether Your Honor is familiar with the contents of the motion papers filed on behalf of and in opposition to the motion with the Circuit Court of Appeals?

*Argument on Motion.*

2404

The Court: I think I have a copy of the motion papers filed on behalf of the defendant. I do not have anything else.

Mr. Friedman: May I ask whether it may be stipulated that all papers both for and in opposition to the motion be deemed before the Court as if filed on the present motion?

Mr. Block: I have no objection.

2405

Mr. Friedman: In order that the present motion have some formal record as a motion I caused to be served on the United States Attorney for the Southern District of New York last Friday a formal affidavit or notice of motion bringing on the present motion before Your Honor today and I ask leave to file that with Your Honor. The motion

papers bringing on the present proceeding have incorporated in them by reference the papers we used in the motion before the Circuit Court of Appeals. In view of Your Honor's statement as to having in Your Honor's possession a copy of the motion papers which I filed on behalf of the defendant in the Circuit Court of Appeals, I am not going to take the time now to restate the contents of those papers.

2406

I merely want to point this out: the application, to the extent to which Your Honor is authorized to hear it, is predicated upon an unauthorized communication by a bailiff with the jury. The bailiff made an affidavit, which was submitted with the motion papers in the Circuit Court of Appeals, to the effect that during the jury's deliberations he took it upon himself to instruct them they couldn't report a disagreement. The Circuit Court of Appeals, by its ruling on the motion I think it may be fairly inferred, regarded that as sufficient presumption to indicate an act of misconduct or an unauthorized communication to the jury sufficient, if substantiated, to invalidate the verdict. In



*Argument on Motion.*

opposition to the application the United States Attorney, 2407  
 although in possession of a copy of that same affidavit  
 several months prior to the making of the motion recently  
 in the Circuit Court of Appeals, finally obtained from  
 this bailiff an affidavit wherein he repudiated the affidavit  
 which he had given to the defendant and stated that no  
 such communication such as he described in his original  
 affidavit had in fact taken place. In other words, you have  
 a situation here where a Government official makes an af-  
 fidavit which, if believed, might very well as a matter of  
 law result in the invalidation of the verdict rendered after  
 this trial. On the other hand we have him making an af- 2408  
 fidavit in which he says that is not true. I think it is al-  
 most needless to remind Your Honor that in those instances  
 wherein a defendant has been convicted, where he succeeded  
 in obtaining from the prosecution's witness a recanting  
 affidavit, it has been the universal practice to classify such  
 recanting as constituting the lowest and least reliable form  
 of evidence. This case is one in which a man has given two  
 contradictory affidavits. Mr. Block a few moments ago  
 handed me his own affidavit wherein he says he questioned  
 members of the jury with respect to this communication, if  
 any communication took place, and in the affidavit he con- 2409  
 cludes, "I am convinced as a result of this investigation  
 that if a hearing were to be held, Krulewitch would be ut-  
 terly unable to establish that Lore had the communication  
 with the jury described in the moving papers". Now I say  
 that affidavit should not be received by Your Honor in op-  
 position to the motion. I think Mr. Block knows very well  
 that his affidavit concerning matters with respect to which  
 he has no personal knowledge whatsoever would be pure  
 hearsay. Suppose he had a conversation with ten jurors,

*Argument on Motion.*

- 2410 that would have no standing in any court as an affidavit, much less anything he could testify to on the stand. No doubt if we submitted his affidavit in court he would be the first to deride and ridicule it; and I say it should not be received, or if it be received that it be ignored by Your Honor as to the finding Your Honor is to make. It has been held in any application where a defendant asks for a retrial that a hearing thereon does not constitute a determination upon papers alone unless there is no factual dispute raised in the papers. Here we have a clear issue of fact by reason of the two contradictory affidavits made by the bail.
- 2411 The only way the issue can be resolved is by the testimony of witnesses. I think the defendant is in this case clearly and undoubtedly entitled to an opportunity to submit to Your Honor such witnesses as he may have as have personal knowledge of this transaction, to testify before Your Honor just as the United States Attorney is entitled to submit witnesses whose testimony may tend to disprove allegations we make. Arguing the matter does not constitute a hearing, no more than submission of the affidavits. If the affidavits are disputed and we have a controverted fact, the resolution of which must be determined, I say the only way we can
- 2412 have a hearing, which is a hearing in more than name only, is opportunity to submit testimony of witnesses and I do not think the defendant or the United States Attorney should be put to the burden of having to bring witnesses all the way up to Rutland, a distance of several hundred miles from New York. I say the only way Your Honor can pass on the question and reach a just determination would be in the venue and locality where those witnesses having knowledge of the facts are available, in New York City, and I therefore ask Your Honor that Your Honor adjourn this pro-

*Argument on Motion.*

ceding to New York City at the earliest date that might be convenient for Your Honor to attend, so we may submit such proof as bears on the application and will enable Your Honor to come to a just determination. 2413

The Court: Do you wish to be heard, Mr. Jones?

Mr. Jones: Has the Court read the affidavit of the bailiff? 2414

The Court: Yes.

Mr. Jones: We believe, if the Court please, that this Court should ask for a remand and then have a hearing in New York City in order to determine from evidence whether or not this communication between the bailiff and the jurors actually took place. That is the only purpose of this motion. 2414

The Court: I understand the purpose of this hearing is solely to determine whether or not I will ask to have the matter remanded to me so I can take testimony. In other words, this is sort of a preliminary hearing. I don't interpret the affidavit of the bailiff as Mr. Friedman states. They asked him if they could disagree. His affidavit does not state that. He says that he told them they must be unanimous, whether they convicted or acquitted.

Mr. Friedman: He says in his original affidavit submitted by the defendant, "I was informed by said jury at the time that they desired further instructions of the trial court as to bringing in a divided verdict. I did not report this request of the jury to the trial court but instead I thought it proper on my part that I could give them instructions as to that request and I thereupon informed the jury that they could not bring in a divided verdict, but that they must bring in a unanimous verdict one way or the other." Now that is what the bailiff says. Now if Your Honor should decide 2415

*Argument on Motion.*

2416

that in itself does not merit the hearing of witnesses. Your Honor in effect approves the practice of the bailiff in taking it upon himself to tell the jury as to what their powers were.

The Court: I do not approve of it at all. The bailiff is wrong, no question about that, but I do not let his affidavit in accordance with your statement. They apparently asked him can we bring a 10 to 2 verdict of conviction, or a 10 to 2 verdict for acquittal.

Mr. Friedman: They asked if they could bring in a divided verdict and he said no.

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The Court: Did he say anything different than that in the affidavit?

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Mr. Friedman: Let us assume in the zeal of advocacy I have placed a construction on it which Your Honor does not. It boils down to this question. Let us assume the bailiff instructed the jury as to requirements of unanimity as to their verdict and that his instructions were perfectly correct as a matter of law. I say no matter how correct his instructions he still would not be entitled to give them. If we are to say where a bailiff instructs them correctly, all right, but where it is incorrectly it is a matter for the Court. I say we are condoning a most dangerous practice, and upon what the bailiff says to the jury will depend what kind of an affidavit he may subsequently make. It is the very fact of his presuming to instruct the jury and to usurp what is the judicial function that is the gravamen of our complaint. Had the Circuit Court of Appeals thought that was of no consequence whatever because the bailiff was correct, I don't think they would have gone as far as they did or even called upon Your Honor to consider whether he cared to consider it further. I think they felt it a sufficiently serious matter to warrant further attention. If I was

*Argument on Motion*

error at the outset, I did not mean to misconstrue what actually happened. I was speaking from memory without the paper before me, but I meant to say the practice of the baliff in taking it upon himself under any circumstances to tell the jury what they might or might not do. It is the very fact he communicated to them something which did constitute a matter of law affecting their deliberations and possibly any verdict they might render. So before Your Honor can decide whether anything of this nature took place, Your Honor will have to pass upon the testimony of the witnesses. I say it would be impossible to render a decision on this application, if Your Honor deems the application before Your Honor, that would be anything other than conjecture or surmise predicated on the papers wholly.

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The Court: Mr. Block?

Mr. Block: May it please the Court, I would like to tell the Court at the outset what the status of this thing is. The notice of appeal has been filed and the appeal is entered in the Circuit Court of Appeals. Now this motion was made and it was made at the time which was about the time the defendant was due to perfect his appeal by filing his transcript and brief, and a stipulation was entered into between the United States Attorney's office, the appellee, and the appellant whereby the time for the filing would be held in abeyance pending the outcome of this matter. This proceeding is purely collateral to the appeal still pending and which has not yet been perfected. As I see it this is a motion for a new trial on the ground of allegedly newly discovered evidence and it seems to me that it is to be governed by the considerations which apply to such motions. After all in arguing this question here before Your Honor as to whether or not Your Honor is going to ask for a re-

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mand, we are in effect proceeding under rule 33 of the Rules of Criminal Procedure whereby if the defendant claims he has newly discovered evidence he can ask the case be remanded. The first consideration, as I understand it, in determining whether there is any merit or not to the motion for a new trial on the basis of newly discovered evidence, which is what we have here, is first whether or not there is any likelihood of the defendant succeeding should he be granted the opportunity to present the newly discovered evidence. On that I would like to dwell briefly for a moment on what we have. We have, as far as the defendant is

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concerned, as the sole witness, George Lore, a witness who has made two affidavits, one saying that something happened and the other saying that the thing did not happen. Now I was not there, Your Honor, and I do not know what happened, but I do say this, where a defendant relies as the sole witness on a man who has told two exactly opposite stories in affidavit form on two separate occasions, that that is not a witness whose credibility is worth anything and on that basis alone the motion should be denied because of the little likelihood of Lore's testimony being able to stand up in court, simply because he has made these two conflicting

2424

statements. What is the other aspect of the thing? The other aspect is that I personally interrogated all of the jurors—

Mr. Friedman: I object to counsel stating what he learned by interrogations of the jurors.

The Court: I am here to determine whether or not I want to hear this matter further. What he has found out, or what you have found out, is of interest to me. Go ahead.

Mr. Block: I interrogated all of the jurors and in addition to all of the jurors I talked to the other bailiff who



*Argument on Motion.*

with George Lore had the jury in custody during the time that it was engaged in its deliberations. That was Mrs. May Mahoney of New York City. And as I stated in this affidavit, on the basis of talking to the jurors I am convinced that Krulwich would not be able to prove that any such communication had occurred. Now Mr. Friedman is very excited about that statement which is contained in this affidavit, but I had a similar statement in my original affidavit which I submitted to the Circuit Court of Appeals. This last affidavit which we are talking about I only prepared day before yesterday. In the original affidavit I submitted to the Circuit Court of Appeals I had said in connection with the other point, viz., the alleged false swearing of Mrs. Swift, I had made the identical statement there, I had said that as a result of talking to everybody who could have had any possible knowledge about what happened on the Voir Dire examination, I am convinced as a result of my investigation that if a hearing was held on this point, the appellant would be unable to establish that there was any falsification. Mr. Friedman never took exception to that statement in that affidavit. As a matter of fact I believe the reason why the Circuit Court of Appeals disposed of the Mrs. Swift point and suggested that Your Honor hold a hearing on this other point is because I did not put a similar statement in regard to the bailiff point in my original affidavit, and the reason I did not was purely an oversight because I felt it was such a strong case, where you had the defendant's witness recanting, that it was just an oversight on my part, and so I did not put in the statement which I made in my affidavit of two days ago. I tell you I could have made the same statement I am making now in the affidavit I submitted to the Circuit Court of Appeals.

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*Argument on Motion.*

2428 It was an oversight that I did not. I will say furthermore on the possibility of the defendant succeeding, I received a call Friday—that is last Friday—a telephone call from a juror in this case and the juror told me that—I want to preserve the identity of the juror—I can safely say it was a woman who called, she told me she had been contacted by an investigator who asked her a series of questions going to the points we are talking about here. Now I do not know whether any of the other jurors were contacted—I think it is a reasonable inference that they were contacted at the instance of Mr. Friedman in connection with this case—

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Mr. Friedman: I object to that remark. If the United States Attorney does not know, I wish he would not make any inferences or accusations which involve me. I think he is going a little too far here.

Mr. Brock: I say there's nothing improper about it, Your Honor.

The Court: Well, was the investigator from your office?

Mr. Brock: No, the investigator was not from my office. I say that the fact that one juror to my knowledge was questioned permits the inference that other jurors were questioned about the same thing, and I say it is not without significance in connection with my statement to which Mr. Friedman has taken such violent exception, which I have made in my affidavit, that I do not think Kewitch would be able to sustain his point at a hearing. The defendant even now has not come forward with any other evidence with respect to this alleged unlawful communication than that original affidavit alone. Now the next point is the inefficiency it seems to me of the alleged communication of the bailiff with the jury. As Your Honor pointed out, all

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*Argument on Motion.*

he said in this affidavit, and I think we can assume this is the strongest statement of the case that can be made, viz., the affidavit the defendant offers in the form of this motion, he says I thereupon informed the jury they could not bring a divided verdict but that they must bring in a unanimous verdict one way or the other.

2431

Now every communication that is had which is in fact unauthorized—I am assuming in connection with this that the thing happened, but even if it happened, I am saying it is of no importance, and I say that on the basis of the fact it is not every unauthorized communication which warrants the interference of the Court and I intend to submit to Your Honor a photostatic copy of the memorandum I filed in the Circuit Court of Appeals in which I refer to the authorities on that point. The defendant has seen this memorandum—in fact the defendant will have seen all the papers I intend to submit to Your Honor on which I rely, on the harmlessness of that communication which the bailiff is supposed to have had with the jury, assuming that it did occur.

2432

United States v. Compagna, 146 Fed. (2nd) Second Circuit.

United States v. Soreey, 151 Fed. (2nd), Seventh Circuit.

2433

Your Honor may recall that the Compagna case involved a rather indiscreet Judge who stopped in at the jury room on his way I believe to lunch, and while they were deliberating, and he had some conversation with them. I think he asked "do you think of anything you are going to want to ask me while I am supposed to be at lunch"? The Circuit Court said in affirming the judgment and refusing to set it aside that while it was true that the Judge had absolutely

*Argument on Motion.*

2434 no business to go into the jury room, nevertheless his conversation was completely harmless.

The Court: Was that in the Second Circuit?

Mr. Block: Yes, Your Honor.

The Court: Who was it?

2435 Mr. Block: Judge Moscowitz. Now there's one more technical point I would like to call to Your Honor's attention and that is there is no showing of diligence in connection with this application, and as I understand the rule, and I have cited cases in my memorandum, where a motion is made for a new trial, one of the essential points to be shown is that due diligence has been exercised in obtaining alleged newly discovered evidence and I think in view of the contents of Lore's recanting affidavit—I don't think Your Honor has seen that—to summarize it Lore says that Krulewitch, the defendant in this case, came to see him on two occasions after he had been convicted and said to Lore, "I want to get an affidavit from you", and that it was as a result of Krulewitch's urging and telling Lore that it was all right to sign a phony affidavit, that Lore went ahead and signed the affidavit which the defendant relies on in this case. That is what Lore says in his affidavit. I don't know whether it is true or not, but I say it is very significant that in the moving papers in this motion that the defendant Krulewitch does not explain how it was that he found out that Lore had had this alleged, this supposed communication with the jury, and how it was that when the verdict was handed down I believe sometime in the latter part of April, why it took them until June 30th until he had obtained Lore's affidavit and had made his motion. I say there's no showing of due diligence in the moving papers and on that ground alone the motion for new trial would

*Argument on Motion.*

tail. That concludes my argument. I respectfully ask that the motion for remand insofar as Your Honor has to pass upon it, should be denied in all respects.

2437

Mr. Friedman: May I be heard briefly in reply?

The Court: Certainly, take all the time you want.

Mr. Friedman: I did not intend to interpose any violent objections to the admission of the affidavit, but I thought I was conducting myself with composure and temperance—that is, composure for me. Mr. Block says he inadvertently omitted something from the affidavit filed in Circuit Court and ventures the statement had he included it the disposition of the Circuit Court would have been different. I think that is a rather fantastic assumption. If he wished to do

2438

so, Mr. Block was at liberty to apply for a re-hearing and ask them to construe it on the other phase and give them an opportunity to revise their determination, if a little thing like that was to carry any weight with them. Mr. Block says he interviewed the jury and as a result of that he is convinced nothing could be elicited from them that would be to the advantage of the defendant. If determination of motions or applications in criminal proceedings is to depend on how convinced an attorney in the case is, I say to

Your Honor you might just as well burn up our law books because up to this point no court has yet determined a matter on how much convinced an attorney is as a result of an investigation where he does not so much as submit to the court a single affidavit bearing on it. He says we have not submitted anything but the affidavit of Mr. Lore up to this point. After all we made this application to the Circuit Court in order that we might have the matter remanded. We thought it was enough to show something that would presumably show something to entitle us to that relief. We

2439



*Argument on Motion.*

- 2440 did not feel called upon to submit every witness' affidavit so that the United States Attorney could send his agents, or the F. B. I. to browbeat them into telling all that they knew, as perhaps they did this man. We are asked to explain how Lore came to make this affidavit for Krulewitch. I can ask them how the man that made that affidavit, afterwards made the affidavit for the Government in which he said he had committed perjury? It might be a matter for judicial determination, why a bailiff after making an affidavit, makes another one in which he says just the contrary. He wants to know why we did not reply to his allegations in the Circuit Court. I answered "ready" for the motion.
- 2441 Mr. Block answered "ready". I said to Mr. Block, "do you mind letting me have your Answer papers?" "I have them here but I won't let you have them until after I argue the motion". Then he reconsidered and came over to me with those papers before the matter was called for argument. I do not know when I was supposed to prepare any reply. The Court rendered the decision. As far as diligence is concerned, Mr. Block at the outset tries to assimilate this application to one for a new trial on the ground of newly discovered evidence. Your Honor knows and we all
- 2442 know it is not that. An application for a new trial on the ground of newly discovered evidence deals with evidence bearing on the issues litigated at the trial—in this case the guilt or innocence of the defendant. These affidavits and this application have nothing to do directly with guilt or innocence, they have to do with misconduct affecting the deliberations of the jury and the legality of the verdict. That is not newly discovered evidence in the sense that the books talk about it and the rules applicable to it and various doctrines have been laid down by courts. The matter of



*Argument on Motion.*

misconduct by the jury is one whenever brought to the attention of the court is a proper subject for judicial investigation. To say we had to do this immediately after the verdict, when we didn't know about it until June 30th, of course, is absurd. On June 30th Mr. Lore makes an affidavit and what do we do? On July 7th, 1947, seven days thereafter, we are in the District Court making application based on that affidavit. I don't know how many days notice is given—the New York practice is to give not less than five days notice of motion. We must have given notice within a day or two, if not the very day we obtained that affidavit. It comes up in Room 318 and we are met with all kinds of technical objections—that is not the proper court—that is not the proper place—there is an appeal pending—the Judge hasn't jurisdiction, and Judge Portery says, "since there is an appeal pending in the Circuit Court of Appeals, the Court is without jurisdiction". Thereupon we proceeded in orderly fashion and made our application to the Circuit Court to remand, and there again Mr. Block files an affidavit and says there has been laxness on our part, we have not proceeded with the utmost diligence. I feel with every obstacle placed in our path we have acted with commendable speed and promptness. As a matter of fact when Mr. Block talked in the Circuit Court about laxity, the Presiding Judge cut him short and told him not to bother to discuss that point, because they could see on the basis of the papers there was no such laxity. Finally I say to Your Honor, Mr. Block and I are in agreement on one thing. We have a case wherein the crucial issue is whether the bailiff is telling the truth when he tells about his conversation with the jury, or when he repudiates it.

The Court: How do you think he would testify in court?

*Argument on Motion.*

2446

Mr. Friedman: He would probably testify the way the United States Attorney has—in accordance with the affidavit he submitted to the United States Attorney, but there are other attending circumstances dealing with how he came to give that affidavit to the defendant which might put an entirely different complexion on the matter. I wouldn't say merely because he made the last affidavit, the first is not the truth, and also if several of the jurors should by any chance state to Your Honor they remember there was some conversation, that, of course, would have a very important bearing on the outcome. I say to Your Honor there

2447

is just not enough before Your Honor in the form of a positive or a negative affidavit by law to reach a determination and do justice to the defendant. If the affidavit Long made to us was the truth, and the one to the United States Attorney the false one, I think Your Honor will agree with me there may be a grave miscarriage of justice as far as the legality of this verdict is concerned. I do not think Your Honor can upon reading these papers say this is necessarily true, this is necessarily false, or this is the way this man would testify. I can see the way Your Honor has indicated he would probably testify the way the United States At-

2448

torney says. That does not say it is the truth. Eventually he might reconsider and say, "no, I was coerced into making the second affidavit and what I said in the first place was the truth". It is a peculiar thing. Your Honor might wonder why the bailiff made such an affidavit for us in the first place. He must have been aware of strange conduct on his part. He does not say he got money for it, or was bribed, but he makes an affidavit in which he says he had a communication with the jury. It seems to me very strange that that was made up out of whole cloth. I think Your Honor

*Argument on Motion.*

will investigate and ascertain how he happened to tell this to the defendant, how he happened to make that affidavit, what induced him to make the affidavit afterwards, what sort of pressure bore upon him. I think only from a witness or witnesses on the stand who have any knowledge of the circumstances in this case—we are prepared with witnesses, although I do not think we are called upon to disclose their identity. I think there's more to this than meets the eye superficially and in all fairness to the defendant and to the Government, and in order that the administration of Justice be kept pure, I think it mandatory that Your Honor conduct a hearing with sworn witnesses, that Your Honor should not dispose of it summarily with the reading of papers. 2449

The Court: Assuming Mr. Lore testified, if I ask for a remand, as you stated he said in his affidavit, have the rights of the defendant been prejudiced?

Mr. Friedman: Does Your Honor refer to affidavit No. 1 or affidavit No. 2? 2450

The Court: I am referring to the only one which I have, the one which you or Mr. Krnlewitch sent to me.

Mr. Friedman: Yes, I say to Your Honor when he said to the jurors that they could not bring in a divided verdict but that they must bring in a unanimous verdict one way or the other, in that way the defendant was prejudiced. 2451

The Court: How was he prejudiced?

Mr. Friedman: Because the jury does not have to bring in a verdict one way or the other. If they cannot agree, they must report that to the court. There is no law says a jury must agree one way or the other. If they cannot agree on a conviction or an acquittal, then it is their duty

*Argument on Motion.*

2452 to report that to the court, after a reasonable time for deliberation. That was an erroneous exposition of the law. Of course, a defendant charged with a criminal offense is prejudiced when the jury is told they must bring in a verdict one way or the other. If the Judge told them that it would be reversible error, and it would be coercion if at that time they stood 8 to 4 for conviction—they would say to themselves, “we have got to bring in a verdict one way or the other, we may as well bring it in the way we are now,” and the four originally for acquittal might have yielded to them; they might have been embarrassed to ask the court a question like that; they might have felt it would be a reflection on their intelligence if they came back with questions like that, so they say to the bailiff, “can we bring in a divided verdict”, and he said, “you must bring in a unanimous verdict one way or the other”. That is not the law. Is there any question but that the defendant was prejudiced by such instruction coming from any source? Certainly if it is wrong for the Judge, how much more wrong for one not a Judge.

The Court: Anything more, Mr. Block?

2454 Mr. Block: I would like to say this is not at all realistic. In every charge it is my recollection the court advises the jury that their verdict must be unanimous. When you send the jury out, “I advise you that your verdict must be unanimous”. Now to work out from that among jurors who at least are reasonable people and who know from experience that juries have been disagreeing for hundred and hundreds of years, is, it seems to me, a completely unrealistic argument. That is on the assumption we are talking about the legal aspect of this conversation that *Law* is supposed to have had with the jury. I say to argue that

*Argument on Motion*

from the language which he has put in the affidavit that the jury felt bound to agree or to disagree unanimously is silly. I would like to say just in passing that my adversary has made certain statements about tactics used by the Government in questioning witnesses. I don't think those statements were proper and I take exception to them. I refer specifically to when he said that the Federal Bureau of Investigation browbeat the witness Lore. I don't believe there is any evidence of that in this case. I think it was completely uncalled for and I take exception to it.

2455

Mr. Friedman: I withdraw that statement. I was merely speculating as to what might have occurred. I was just wondering out loud how a man came to make the contradictory affidavit.

2456

The Court: I would like to know how he came to make the first one. Do you know?

Mr. Friedman: I know some of the circumstances, but not everything. There are several attorneys who do know and when the time comes, if Your Honor should decide to hold a hearing, I will bring every scrap of evidence available bearing on the point. I don't want anything concealed. I want the Court to get everything in the case.

Mr. Block: That brings up the point I was to make finally, and that is what the defendant would like to have here is a finishing expedition. The defendant has nothing to lose, so let's fish into this thing, let's find out why Lore made out two affidavits, let's find out this, let's find out that. As I say, he not only has nothing to lose, but he has something to gain, because he postpones that appeal from being heard by the Circuit Court of Appeals. And I will say as far as whether Lore committed perjury or not, that is a matter to go before another forum, a forum that will try Lore on the

2457



*Argument on Motion.*

2458

indictment we expect to obtain against him for perjury. We say it is dilatory tactics to come here on an insufficient basis and ask Your Honor to hold a hearing so that the defendant may possibly be able to find something which would enable him to argue that he is entitled to a new trial. That is all he is asking, but he has not begun to show any basis whatever for that request.

Mr. Friedman: I have begun to show at least something as far as dilatory tactics are concerned—

The Court: I am not interested—

2459

Mr. Friedman: Block's office stipulated with me to extend my time twenty days for the determination of this application, within which to perfect my appeal, and I think it is ungracious of him to say we are delaying matters when we are proceeding within the terms of our stipulation.

The Court: Have you handed up all you have, Mr. Block?

Mr. Block: Yes, Your Honor.

The Court: Have you anything more, Mr. Friedman?

2460

Mr. Friedman: I handed up the pro forma papers before Mr. Block handed up the photostat of the memorandum which he submitted to the Circuit Court of Appeals, and in order to balance that I will take the liberty of giving Your Honor a copy of the memorandum which I submitted to the Circuit Court of Appeals. Your Honor understands in part it deals with the matter that was excluded because at the time of its writing we did not realize the inquiry subsequently would be limited. May I apologize for the typing? There are one or two corrections.

The Court: That is all right. Decision reserved.

Mr. Block: May I say just one more thing, Your Honor? That is this: I don't want to be misunderstood in connection with the statement that I made in my last affidavit.



*Argument on Motion.*

that I have interrogated these witnesses, etc., and made the statement I am convinced on that basis. I do not want it felt by Your Honor that I should annex the evidence taken from those, or the results of the questions taken from those jurors. My feeling in connection with that was it would be an unwarranted disclosure at this time of what the Government's evidence would be in the event the hearing were to be held, and that is the reason I handled the matter as I did. 2461

The Court: The Court will stand in recess. (5 p. m.)

## CERTIFICATE.

2462

I, KATHARINE A. GARDNER, Court Reporter, hereby certify that the foregoing is a verbatim transcript of my verbatim stenographic notes of the hearing held before the Hon. James P. Leamy, D. J. at Rutland, Vermont, November 17, 1947 in re motion filed in *Indictment C-113-338 for the Southern District of New York, United States of America v. Alvin Krulewitch.*

KATHARINE A. GARDNER,  
United States Court Reporter  
for the District of Vermont.

2463

Burlington, Vt., November 29, 1947.

## Judge's Order Denying Request for Remand.

2464

At a term of the United States District Court for the Southern District of New York, held in the United States Court House, at Rutland, Vermont, on the 28th day of November, 1947.

Present: Hon. James P. Leamy,

United States District Judge.

(Same Title.)

2465

The above named appellant having applied to the United States Circuit Court of Appeals for the Second Circuit for an order remanding this cause to the United States District Court for the Southern District of New York to permit the appellant to move therein for a new trial, and the Circuit Court of Appeals for the Second Circuit having unanimously made and entered the following order:

“MOTION DENIED, BUT IF LEAMY, J., AFTER HEARING AND CONSIDERATION SEES FIT TO REQUEST THAT THE CAUSE BE REMANDED TO HIM, SUCH A REQUEST WILL BE GRANTED. HOWEVER, THIS APPLIES ONLY TO THE POINT OF THE SUPPOSED COMMUNICATION OF THE BAILIFF WITH THE JURY”.

2466

Now, upon reading and filing the aforesaid order of the Circuit Court of Appeals for the Second Circuit, dated October 10, 1947, the notice of motion dated November 14, 1947, the affidavit of Jacob W. Friedman, verified November 14, 1947, annexed thereto, and the affidavit of Frederick H. Block, sworn to the 14th day of November, 1947, and on copies of all papers submitted in support and in opposition to the motion heretofore made by the appellant on October 6, 1947, in the Circuit Court of Appeals,

*Government's Exhibits 1, 2 and 3.*

And, after hearing Jacob W. Friedman, Esq., attorney for the appellant in support of the request for a remand, and John F. X. McGohey, Esq., by Frederick H. Block, Esq., of counsel, in opposition thereto, and due deliberation having been had, it is

2467

ORDERED that no request for remand be made herein.

(sgd) JAMES P. LEAMY,  
U. S. D. J.

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**GOVERNMENT'S EXHIBITS.**

2468

**Government's Exhibit 1.**

Photo of Rose Sookerman—Not to be printed in record.  
To be handed to Court upon argument.

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**Government's Exhibit 2.**

Photo of Belle DeMarço—Not to be printed in record.  
To be handed to Court upon argument.

2469

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**Government's Exhibit 3.**

Photo of El Chico Hotel—Not to be printed in record.  
To be handed to Court upon argument.

## Government's Exhibit 5.

Canandaigua, N. Y.

Dec. 8, 194

2470

I, Elizabeth Mary Johnston, also known as Joyce Winston and Joyce Winters make the following voluntary statement to John Trost whom I knew to be a Special Agent of the Federal Bureau of Investigation. No threats or promises have been made to me and I make this statement of my own free will knowing that it can be used in court against me.

2471

I started hustling when I was 19 years old in Utica, N. Y. I have hustled ever since that time in Utica and New York City. I never went out of New York State until the Spring of 1941 when I took a trip by automobile from New York City to Washington, D. C. I went down with some fellow I met in New York whose name I don't know. We just went down and back for the ride and I did not have sexual relations with him.

2472

The only other time I went out of the state of New York was toward the latter part of October 1941. At that time, Micky Roberts, who also goes by the name of Betty, and I were living together. We hadn't been hustling because things were hot in New York City and we heard that Miami, Florida, was open and decided to go down there. Mickey and I had some money and we decided that we'd open up a place in Miami.

I have known Alvin Kay for about three years and he is my boy friend. I have never given him any money or worked for him. He had no part in the arrangements for Mickey and I to go to Miami, Florida but he knew we were going down there. Mickey and I paid our own fare to Miami and went down on a train called the Champion. I was in Miami from the latter part of October 1941 to

*Government's Exhibit 5.*

Dec. 1, 1941. During that time Alvin Kay came down to Miami on business and I saw him while he was there but I did not have intercourse with him. When Mickey and I got to Miami we tried to open up a house of our own and paid some money to a fellow so that we could open up. Mickey handled this deal and paid the money to the wrong person. After we found out we couldn't open our own house we both went to work at Lil's place at 45 5th St. We did run our own place for three or four weeks at 66 N. W. 5th St. on the top floor of the El Chico Hotel. I didn't work anywhere except at our own place and at Lil's. I got sick while I was working at our place and when I was at Lil's for 2 or 3 days I got too sick to work. About the last of November I decided to come back to New York State and on Dec. 2, 1941 Mickey and I went from Miami to New York City. We came back on the Champion and paid our own fare. We got into New York City at 12:08 pm on Dec. 3, 1941. Mickey stayed until Dec. 5, 1941 and went back to Miami where she was going to go into partnership with some Madam whose name I don't know.

2473

2474

From the time I got sick in Miami until the present I haven't done any hustling. I saw Kay on my way through New York City on the way back from Miami but I did not have intercourse with him. I left New York City on Saturday Dec. 6, 1941 and came by train to Canandaigua, N. Y. where I have been ever since.

2475

I have read the foregoing statement on five pages and I understand it all and it is all true and correct and therefore I have signed it and placed my initials on each page.

Witness:

E. M. JOHNSTON.

JOHN F. TROST, Special Agent.

F. B. I. Buffalo, N. Y.

*Government's Exhibits 6B and 7.*

2476

**Government's Exhibit 6A.**

Auto rental contract. Main Rent—a—Car Service—J. Barbash & Sons, Inc., Miami, Fla. October 24, 1941, signed by Al Kay, showing rental of automobile for 2 days.

**Government's Exhibit 6B.**

Similar to Exhibit 6A,—dated Nov. 21, 1941, showing rental of automobile for 6 days.

2477

**Government's Exhibit 7.**

Lease between Cora Blumberg, a widow and Pauline Hilson, single. Second floor of 66 N. W. 5 St., City of Miami, Florida. For a period of five years from the 15th of October, 1941. Paying the sum of (\$900.00) Nine hundred dollars per annum. For a rooming house. Three hundred dollars (\$300.00) to be paid Oct. 15, 1942 and Two hundred (\$200.00) Feb. 2, 1943, Two hundred (\$200.00) March 2, 1943 and the balance of the payments to continue as above for the life of the lease—with a five (5) day default clause.

2478

CORA BLUMBERG,  
Lessor.

PAULINE HILSON,  
Per A. K.

CHAS. NEVILLE  
GRACE ADAIR



*Government's Exhibits 9 and 10A to 10K and 11A.*

**Government's Exhibits 8A, 8B, 8C.**

2479

3 route slips of Red Top Cab & Baggage Co. for Florida East Coast Railroad Co. dated Oct. 22, 1941, purporting to show delivery of 9 pieces of baggage to 66 N. W. 5th St., bearing P. R. R. baggage check nos. 536754-5; 559035-6; 536757; 536876-7-8; 559133.

**Government's Exhibits 9 and 10A to 10K.**

12 Telephone Company slips showing calls between N. Y. & Miami 3-8006 from "Alvin", collect, on Oct. 29 (2); Oct. 30; Nov. 4; Nov. 6; Nov. 10; Nov. 12; Nov. 13; Nov. 19; Nov. 30; Dec. 2.

2480

**Government's Exhibit 11A.**

Lease dated June 7, 1936, between Irweis Holding Corp. and Bert Lewis for apartment #32, 4 rooms at No. 51 W. 156th St., New York City, for 15 months from June 15, 1939 to Sept. 14, 1940, at \$43. per month, signed Irweis Holding Corp. by I. Werner, secretary, landlord, Bert Lewis, tenant. Witnessed as to tenant by Paul Csorba.

2481

Government's Exhibit 11B.

2482 Office: 185 E. 167th St., Bronx, N. Y.  
Jerome 7-1250

Subject to the Approval of the Owner

MEMORANDUM LEASE

New York, June 5, 1939

Premises 515 W. 156 St. Apt. No. 32  
Tenant (Full Name) Bert Lewis  
Tenant's Present Address ... How Long There ... Tel ...  
Present Landlord or Agent ..... Address .....  
2483. Tenant's Previous Address Atlantic City, N. J.  
How Long There Three years  
Previous Landlord or Agent ..... Address .....  
Tenant's Occupation Advertising Salesman  
Business: Firm Associated Adv. Co. Kind of Business  
Advertising .. Address 1465 Broadway. Tel.  
Wis. 7-2122

Family Consists of Two  
References: Bank ... Branch: ... Checking ... Savings ...  
Business ..... Address .....  
Personal ..... Address .....

2484 Term of Lease Commencing June 15, 1939 Ending Sept.  
15, 1940

Rent Payable in advance in the sum of \$ Forty-three on  
the Fifteenth day of each month

Received (\$5) Five Dollars on account of first month's rent  
BALANCE OF FIRST MONTH'S RENT TO BE PAID UPON DEMAND  
AND BEFORE POSSESSION IS HAD.

1829

*Government's Exhibit 12.*

References:

Ben Gordon

555 W. 150th St.

B. Kay

1465 Broadway

Landlord .....

By .....

Tenant Bert Lewis .....

Tenant .....

Witness:

Paul Csorba

2485

2486

**Government's Exhibit 12.**

Lease 610 W. 174 St.

**Government's Exhibit 13.**

I worked with Joyce in July 1941. I worked one month Joyce came in about 2 or 3 nights a week I knew Joyce as Mrs. Al Kay. I saw her again at 77 St. 1st Ave. Rest. in Oct. or Nov., 1942 Joyce told me she broke up with Al Kay and married another fellow & said she needed money as things weren't so good—she then asked me if I would go to the F. B. I. & say there was vice going on in his store & he knew it. I told her I couldn't say that & she said maybe we can get some money would you and I said no. I left after a few minutes—a few days later I went up to see Al Kay and told him what she had said & he said don't pay any attention to her as she is crazy. I next saw Al Kay in May 1943 & he told me Joyce caused him trouble & would I come to court & I said yes.

2487

*Government's Exhibits 14, 15, 16, 17 and 24.*

2488

Received from  
Mildred Ollila July 26, 1943 by Leon H. Rumans, and  
Wallace R. Hoagland.

O. K. Mildred Ollila

**Government's Exhibit 14.**

Statement from Ollila to Government—Questions and  
Answers etc.

2489

**Government's Exhibit 15.**

Application for Apt. 325 E. 77 St.

**Government's Exhibit 16.**

Lease of Apt. 325 E. 77 St.

**Government's Exhibit 17.**

2490

3 auditors' stubs of Penn. R. R. tickets, stamped Oct.  
21, 1941; two for one-way trip, N. Y. to Miami on Cham-  
pion, one for round-trip on same, leaving Oct. 21, 1941,  
for seats 23, 24 and 29 in car CE2; ticket Nos. 19743, 19744  
(one-way) and 32500 (round trip).

**Government's Exhibit 24.**

6 sheets purporting to be purchase order of Royal Fur-  
niture Co., Baltimore, Md. to El Chico Hotel, Miami, Fla.  
for living room furniture at total price of \$283.00—order  
dated October 21, 1941, together with bills of lading and  
invoices therefor. We have only two copies.



and 24.

Rumans, and

Mildred Olin

Questions and

St.

stamped Oct  
arrived on Chat  
Oct. 21, 1941  
s. 19743, 1974

of Royal Fur  
1. Miami, Fla  
\$283.00—order  
of lading and

# NOTICE OF ARRIVAL

Ship & Voyage No. CHAT-619 3

MERCHANTS & MINERS TRANSPORTATION CO.,  
CONSIGNEE

Date NOV.-7-41

The following Freight has arrived consigned to you, and  
is ready for delivery. If not removed within the customary  
time allowed, it may be stored, at your risk and expense,  
without further notice.

From BALTO.

To MIAMI

Bill No.	Shipper and Initial Point	Consignee No. Articles, Commodity and Marks	Destination and Marks	Weight	Class and Rate	Total Prepaid	Total Collect
4686	Royal Furn Co	El Chico Hotel 66 N W 5th St					
		1 Cart Sofa		250			
		3 Car Chairs		375 207 21 1/2	12CNPU	13 84	

## NOTICE

Free Time on This Shipment  
Expires 12 M Nov 15 1941

Government's Exhibit 24.



## Government's Exhibit 24.

2494

## PURCHASE ORDER

THE ROYAL FURNITURE COMPANY

8 North Frederick St.

Baltimore, Md.

Order to El Chico Hotel  
 66 N. Y. 5th St. Miami Fla.  
 Ship By M. & M. T. Co.

Octo. 21 1941

Terms .....

Via .....

Delivery Wanted .....

F. O. B. ....

Please enter our order for the following items

2495

Quantity	No.	Description	Price	Amount
1	9618	Sofa Red	54.50	
1	"	Chair	29.25	
1	"	H B Blue	30.50	
1	"	" Blue	30.50	
1	9618	Sofa Blue	54.50	
1	"	Am Cha Blue	29.25	
1	"	H B Red	30.50	
1	"	" "	30.50	

289.50

2496

less 2% ..... 6.50

283.00

By Cash 150.00

**Government's Exhibit 25:**

New York, N. Y.

2497

December 17, 1941

Received the following articles and papers from Special Agents L. H. Rumans and W. R. Hoaglund, Federal Bureau of Investigation, which articles and papers were taken from my person and home at the time of my arrest:

1. One envelope marked 1590 2nd Ave containing lease and numerous receipts covering the above premises.
2. One envelope marked 1691 2nd ave; one envelope marked Apt. 325 E. 77th street; one envelope marked "Lorëlli;" one envelope marked 1594 2nd ave—all the said envelopes containing miscellaneous receipts.
3. Miscellaneous receipts and letters pertaining to the above stores.
4. One empty wallet (Blue leather)
5. One bill of sale for motor vehicle from Sandra Kay to Pauline Hilson dated Jan. 22, 1941.
6. Following leases and certificates:
  - Lease from Cora D. Blumberg to Pauline Hilson dated Oct. 2, 1941.
  - Lease from Nellie Scheyer to Ben Gordon dated July 29th, 1940.
  - Two certificates of Alvin Kay doing business as Ben Gordon for Royal Cider Stube 1594 2nd Ave.
  - Partnership certificate of Valentina Tyszka, Pauline Baker and Dorothy Miller for Royal Cider Stube at 1594 2nd ave.
  - Bill of Sale from Rose Smith and Mae Lorde to Betty Gordon dated July 24th, 1940.
  - Bill of Sale from Emanuel Costa to Pauline Hilson dated Oct. 19, 1939.

2498

2499

*Government's Exhibit 25.*

2500

Bill of Sale from Emanuel Costa to Gail Winslow dated May 24th, 1940.

7. Numerous Christmas, birthday and postal cards.
8. Credit book with receipts from Vim Radio to Pauline Hilson 325 E. 77 street.
9. Six keys and key case.
10. Social security card of Elizabeth Mary Johnston No. 059-18-5456.
12. Numerous letters from brokers to Mrs. Joyce Kaye.
13. New York Motor vehicle registration for 1941 to Pauline Hilson covering 1938 Oldsmobile, Engine number L296788.

2501

14. Letter from J. L. Wambaugh to A. Kay dated Nov. 22, 1941.

15. Two pictures.

16. Following bank books:

No. 22,312,794 North River Savings Bank 34th street in name of Rose Sookerman.

No. 340,037 Bowery Savings Bank 42nd street. Rose Sookerman.

No. 35626 K Manf. Trust Co.—1513 First Avenue in name of Pauline Hilson.

2502

No. AF17508 Natl City Bank, East End Branch in name of Mrs. Pauline Hilson.

ALVIN KAY

*Defendant's Exhibit B.***DEFENDANT'S EXHIBITS.**

2503

**Defendant's Exhibit A.**

3 photos of complaining witness taken on boat from Virginia Beach Va. to New York—Omitted in printing record—To be handed to Court upon argument.

**Defendant's Exhibit B.****FLORIDA EAST COAST RAILWAY CO.**

S. M. .... and Edward W. Lane, Trustees

2504

Miami, Florida.

10-22-1941.

This is to certify that I received from the Florida East Coast Railway Company, a dog under check No. 60248 issued by the ..... Railroad at Wash. D. C. and that I agree to either have the dog vaccinated by an accredited veterinarian, for rabies, or quarantine the dog on my premises for a period of not less than twenty-one (21) days in compliance with Special Order number thirty-five (35) of the Florida State Live Stock Board.

2505

Signed MISS JOYCE KAY

Address 66th North West 5th St.

(Street and number)

Witness C. E. Darrow City .....

Train No. ....

*Defendant's Exhibits D, E, F and I, J, K, L, M, N, O, P*

2506

**Defendant's Exhibit C.**

Joyce's note to Harold:

Harold its better that we not see each other any more  
my husbands down and he heard about us and so as not  
to cause trouble on any sides just dont call and forget me

**Defendant's Exhibit D.**

Photograph of Hotel El Chico—Omitted in printing record—To be handed to Court upon argument.

2507

**Defendant's Exhibit E.**

Same as Exhibit D only different view. Photo of El Chico Hotel—To be handed to Court upon argument.

**Defendant's Exhibit F.**

2508

RENT RECEIPT	Oct. 1st 1941
	Received from Pauline Hilson
	Twenty five.....Dollars for
	Rent of as deposit on No. 66
	N. W. 5 St. ....Month
	Ending .....19....
	\$25.00 MRS. S. BLUMBERG
	Rent Must be Paid in Advance.

**Defendant's Exhibits I, J, K, L, M, N, O, P.**

8 Greeting Cards—Omitted in printing record—To be handed to Court upon argument.

*Defendant's Exhibit KK.***Defendant's Exhibit II.**

2509

The official guide of the railways October 1941.

The Miami Champion East Coast No. 105

Leaves N. Y. Penna Station 3:55 PM

" Baltimore Md. 7:13 PM

" Washington D. C. 7:55 PM

Arrive Miami Fla 4:55 PM

**Defendant's Exhibit KK.**

Approved: Edward C. Wallace

2510

Assistant United States Attorney.

Before: Honorable Garrett W. Cother

U. S. Commissioner for the Southern  
District of New York.

UNITED STATES OF AMERICA,

v.

ALVIN KRULEWITCH, alias AL-  
VIN KAY,*Defendant.*

Complaint.

Violation

Title 18

Sec. 241, U. S. C.

2511

Southern District of New York, ss.:

Wallace Hoaglund, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation and upon information and belief alleges and charges as follows:



*Defendant's Exhibit KK.*

2512

That heretofore, to wit, on or about the 20th day of May 1943, in the Borough of Manhattan, City, State and Southern District of New York and within the jurisdiction of this Court. Alvin Krulewitch, alias Alvin Kay, the defendant herein, unlawfully, wilfully, knowingly and corruptly did endeavor to influence, intimidate and impede on Elizabeth Johnston, who was to the knowledge of the defendant a witness before the United States District Court for the Southern District of New York in a proceeding then pending before the aforesaid District Court entitled United States of America v. Alvin Krulewitch and another, in

2513

which proceeding said Alvin Krulewitch, alias Alvin Kay was named as a defendant, in that the said Alvin Krulewitch, alias Alvin Kay, did threaten to cause physical harm to the said Elizabeth Johnston, with intent to cause the said Elizabeth Johnston to fail to appear in Court and fail to testify against the said Alvin Krulewitch, alias Alvin Kay, in the trial of the action aforesaid; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 241, U. S. C.)

2514

The source of deponent's information and the grounds of his belief are investigations made by him in the course of his official duties.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendant and that he may be arrested, and imprisoned or bailed as the case may be.

WALLACE HOAGLUND  
Special Agent, F. B. I.

*Defendant's Exhibits LE and MM.*

Sworn to before me this  
27th day of May 1943.

2515

Garrett W. Cotter,  
U. S. Commissioner  
Southern District of New York.

A true copy.

(SEAL)

GARRETT W. COTTER,  
United States Commissioner for the  
Southern District of New York.

2516

**Defendant's Exhibit LL.**

Lease from Dessark Corporation to Alvin Kay for Apt 21A  
Rental \$225 Mo. From January 1938 to Expiring June 1,  
1939.

**Defendant's Exhibit MM.**

Furniture Receipt from Doehler Metal Furniture to Al Kay 2517  
Dated October 21, 1941 Paid \$50.26 one Booth.

## Defendant's Exhibit OO.

2518 Phone 3-8006

I

Nov 6, 194

EL CHICO HOTEL  
66 N. W. 5th Street  
Miami, Florida

ROOMS BY DAY, WEEK,  
MONTH OR SEASON

PAULINE HILSON  
PROP.

2519 My Darling Daddy

I received the money you sent me and Daddy you don't know how happy you made, only please don't send so much as I know I am a burden to you, as bussiness must not be so good & you are only thinking of me.

I haven't been feeling so well as my stomache as been bothering me terrible I went to the Dr. and he gave me medicine, but it didn't seem to help any.

Darling when are you coming down I miss you terrible I go around here talking to myself no excitement just rest.

2520 Paulie has not received her State Licence and she is really

## II

upset as no money coming in and cant rent her rooms until she get the license. If you can suggest what do for her do it. The commisser of the town owns the grocer across St & Skippy wet on his box in front of the Store and I had to pay \$.80 for Damages it sure was an expensive pea

Why can't you come down sooner next week. Why must you wait for Thanksgiving 23rd down here it is the 30th

*Defendant's Exhibit 00.*

really want you as bad as I miss you Darling & need you  
(catch)

2521

I got a letter from Mother all is OK at home

Dad is working now at the Hosp and nothing new there.

## III

I hope Daddy that you have been a good boy and not fooling around. and that you are *true* to me as it would break my heart if you were not True

What Do You do in your Spare time How is Everything doing in Yorkville send me & Pauline all the dirt about the girls I wonder if they Miss us. Miami would be heaven Daddy if you were here all the time with me. I often wish I had my own home. here Maybe Someday I will and then Daddy I could be the most happiest Girl just You & I in a home of our own and maybe Junior before you know it.

2522

## IV

Daddy I think I might as well tell you the now I think I am going to have a baby Daddy I am afraid but I am glad in a way too but please tell me what to do. As you know best. Now Darling won't you come down sooner I Love You so much my Darling You possible could never know what you really mean to me.

2523

I hope All is OK at the Apt. And you move all the furniture here then I'd be very happy & contented.

Please Daddy See what can be done for Paulie maybe if she was taken in roomers I'd have chance to do some work and it wouldn't be so dull cleaning up. Paulie wouldn't

*Defendant's Exhibit FF.*

2524

V

take any money until now but I will help her all I can for  
she is my best friend.

Well Daddy I am getting tired and I am so worried  
about what I mentioned in this letter.

So Daddy I am Begging you please come down soon.

Will Close Now Loving You & Never will I change S  
Please get in touch with me Soon.

Always Your Own

2525

BABY JOYCE KAY

P. S. I Love you with All my Heart Soul Sweetheart.

**Defendant's Exhibit PP.**

BUYING - SELLING - RENTING - INSURANCE

J. L. WAMBAUGH

REGISTERED REAL ESTATE BROKER

On Federal Highway U. S. No. 1

North of Ojus, Florida

2526

Nov. 28, 1941

A. Kay

325 East 77 St.

New York, N. Y.

Dear Sir:

In response to your inquiry have the following to report  
The two blocks along the Highway at 128 & and 129

*Defendant's Exhibit PP.*

can be bought for. have been sold—can get you other blocks at higher price. Those 2 blocks were sold last week. The property near Ben Mardens can be bought for \$13,200 or \$30.00 foot 440 feet on Highway—400 feet deep. You can make terms to suit you. Let me know if interested. Can get good deed and abstract.

2527

Yours truly

J. L. WAMBAUGH

J. L. WAMBAUGH

2528

Federal Highway U. S. No. 1  
North of Ojus, Florida.

Air Mail

(Hollywood, Fla.)

(Cancelled Six-cent

(Nov 29 3:30 PM)

Air Mail Stamp)

( 1941 )

A. Kay

325 East 77St.

2529

New York City

N.Y.



*Defendant's Exhibits U1, U2, U3, U4 and V1, V2.*

2530

### **Defendant's Exhibit QQ**

Copy of Telegram Western Union

Copy of Telegram Western Union

NBS 206

Miami Flo Nov 8 11.15 P.

Alvin Kay Apt 1J

325 East 77 Street

8 Duplicate (10)-(11)

It Happened Stop Call Us  
Immediately Important Love  
Joyce & Betty

2531

### **Defendant's Exhibits U1, U2, U3, U4.**

Four (4) photographs of furniture factory of Samuel Levinson showing different outside views. Factory located 1 flight up and has no store downstairs. This factory is in Baltimore, Md.—Omitted in printing record—to be handed to Court upon argument.

2532

### **Defendant's Exhibits V1, V2.**

Photostats of money order for \$110.00 sent from Alvin Kay in New York to Pauline Hilson, 66 N. W. 5 St., Miami, Florida on October 28, 1944.

Message

Give Fifteen to Joyce Love

*Defendant's Exhibits X1, X2.***Defendant's Exhibits W1, W2.**

2533

Photostats of money order for \$25.00 sent from Alvin Kay  
in New York to Pauline Hilson 66 N. W. 5 St., Miami,  
Florida. November 11, 1941—Gift Order—

## Message

Phone you Friday Nite Love—Alvin Kay

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**Defendant's Exhibits X1, X2.**

2534

Photostats of money order for \$60.00 sent from Alvin Kay  
in New York to Pauline Hilson 66 N. Y. 5st., Miami,  
Florida, November 9th, 1941.

## Message

Love to Joyce Phone Tonite

Alvin Kay

2535 ✓

**Defendant's Exhibit H.**

2536

Marked for identification.

**CITY MAGISTRATES' COURT  
CITY OF NEW YORK****WOMEN'S DISTRICT—BOROUGH OF MAN.****THE PEOPLE OF THE STATE  
OF NEW YORK**

against

**BETTY SORRENTINO**

2537

**BENCH WARRANT AFTER CONVICTION**

Issued: October 16, 1942.

For Night Service.

Thomas Cullen Jr.  
10-16-42

Docket 2808—1942

Arrest. off. John Pacifico

2538

5th Div.

P.O.D.B. Rose

Bureau #H26787.

Last address: Isaac Hopper Home,

251 S. 1st St. Bklyn.

Wanted by F.B.I. x

Probation ends 8-20-43

Aliases:

Elizabeth Johnson

Joyce Winters

*Defendant's Exhibit H.*

Family home in Cannandaigua

2539

Lived before arrest at 203 West 70th under name of Sorrentino.

I have made a diligent effort to locate the defendant and am unable to find her.

Officer John Pacifico shield #7354

Sworn to before me this 26th day of Feb: 1943,

J. A. Blanchfield,  
City Magistrate.

2540

Certified, true & correct copy.

Rose Burger  
Official Court Stenographer.  
10-5-45

CITY MAGISTRATES' COURT  
OF THE  
CITY OF NEW YORK.

WOMEN'S DISTRICT—BOROUGH OF MANHATTAN.

2541

City of New York,

County of New York, S.S.:

In the name of the People of the State of New York:

To the Sheriff of the County of N.Y. or to any Marshal or Policeman of the City of New York, or to any Peace Officer in the County of N.Y. Greeting:

Betty Sorrentino, having been on the 17th day of August 1942 in the Women's District City Magistrates' Court, in

*Defendant's Exhibit H.*

2542 the County of New York, duly found guilty by City Magistrate Morris Rothenberg and the said defendant having been thereafter duly released on probation upon condition of her good behavior, stay at Isaac Hopper Home until employment is found; not repeat offense; live respectably report as directed. Sall Betty Sorrentino having failed to observe the conditions of such release.—

2543 You are therefore Commanded forthwith to arrest the above named Betty Sorrentino and bring her before the Court for judgment, or if the court have adjourned, you will deliver her into the custody of the Warden, Deputy Warden or Keeper of the City Prison in the said City of New York, County aforesaid.

Dated at the City of New York, County of New York on the 16th day of October 1942.

T. J. CULLEN.  
City Magistrate.

2544

**Defendant's Exhibit NN.**

DEFENDANT'S EXHIBIT N: N. MARKED FOR  
IDENTIFICATION BY COURT.

2545

EL CHICO HOTEL

66 N. W. 5th Street

Miami, Florida

Rooms by Day, Week  
Month or Season

Pauline Hilson

Prop.

Oct. 27, 1941

2546

My Darling Daddy

After just finishing my housework I am sitting down to tell you all about me. Well the place here really looks good, and I am through with my share of the work now I am going to get a good rest as you wanted me to. Things are so slow here that you can't help but get a rest nowhere to go and no excitement only on Sunday. I look out the window & see & hear the Salvation Army singing. It sure don't sound like a N. Y. nite club. Paulie is sure proud of the place and expects to do good. I hope she is right as she's a good girl, does almost everything for me.

2547

So Daddy you can see there is nothing to do but rest and I am sure it won't be long and I'll feel like myself again.

Don't worry about me I am getting good medical attention and rest & sunshine & if that is anything I will feel O K soon/only I am lonely for you & if you were here I would be in Heaven.



*Defendants Exhibit NN.*

2548 If you want to you can send me money so I can go to Drs regular send it in c/o Pauline as I have no identification to cash the checks and she has.

I hope Darling I am not being a burden to you as I am always sick & needing money. If I am please don't send much as I would feel bad if you couldn't afford it. If I *didn't have you* Darling I don't know what I would do.

Now Daddy please take care of the apt, and don't have anyone come in while I am away and be a good boy as you know I love you only and you won't have to say that to me as I couldn't see anyone else but you.

2549 Please write often to me as it will feel good when I get your letters & *don't forget* to come down as soon as you can I will be counting the days. I just read Paulie's letter sorry I can't let you get mail without my permission from anyone I wrote my mother I am here I expect her to write here to me I told her you & I would be up there for Xmas so don't forget you & I are going to be there for Xmas. There is nothing else to write about only I hope you are well & Happy with all my Love to my Darling Daddy Please phone me often & write often

2550

Your Baby Joyce

Answer at ONCE as I will be looking for a letter from you.

Believe me my Darling I am being very true to you and I Love you as I could never love anyone else.

Remember Don't fool around with any girls or some one will be bald Headed.

So write Daddy & remember I love you Dearly

Your JOYCE

*Notice of Appeal.*

Exhibits Marked for Identification.

2551

Z-AA-BB CC DD EE FF GG HH II JJ.

The following Exhibits were offered in Evidence and some were admitted and the Judge changed his mind and refused to allow any in Evidence and all were marked for Identification.

**Notice of Appeal.**

IN THE

DISTRICT COURT OF THE UNITED STATES

2552

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES,

VS.

ALVIN KRULEWITCH,

*Defendant.*

Appellant: Alvin Krulewitch.

2553

Appellant's Attorneys: Sabbatino & Todarelli, 233  
Broadway, New York, N. Y.

OFFENSE: Violation of Sections 398, 399 and 88, U. S.  
Code.

JUDGMENT: The defendant was convicted on April  
25, 1947 following a jury trial before Hon. James P.  
Beamy, District Judge.

SENTENCE: Two years on Count 1.

*Notice of Appeal.*

2554

Imposition of sentence suspended on Counts 2 and 3, and defendant placed on probation for two years.

BAIL: The defendant is now on bail pending this appeal.

Alvin Krulewitch, the above-named appellant, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the above stated judgment.

Dated, April 30, 1947.

2555

SABBATINO & TODARELLI

*Attorneys for Appellant.*

233 Broadway,

New York City.

Filed Apr. 30, 1947.

2556

**Supplemental Notice of Appeal.**

IN THE

2557

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

against

ALVIN KRULEWITCH,

No. C413-388.

*Defendant.*

2558

Name and address of appellant: Alvin Krulewitch,  
Park Central Hotel, Seventh Avenue and 55th Street, New  
York City.

Name and address of appellant's attorney: Jacob W.  
Friedman, 170 Broadway, New York City.

Offense: Violation of 18 United States Code, Sections  
398, 399.

Statement of order: Order of Hon. James P. Leamy,  
signed on November 28, 1947, ordering that no request for  
remand be made herein.

2559

Appellant now on bail.

I, the above named appellant, hereby appeal to the  
United States Circuit Court of Appeals for the Second  
Circuit from the above stated order.

Dated: New York, New York, December 5, 1947.

.....  
*Appellant.*

### Stipulation.

2560

The Appellant herein and his counsel have represented and hereby represent to the Appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and counterpoints as are relevant in reply. (Except as to a number of exhibits in possession of the Government, copies of which the Government has refused to furnish to Appellant.)

2561

(2) That in so far as the transcript of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately, to appellant's belief, and omissions, if any, are clearly marked. Such omissions are only of matter wholly immaterial to any question raised on this appeal.

(3) That all exhibits are accurately reprinted, except those described and those specified, namely: Defendant's Exhibits A, D, E, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z. These are to be submitted to court upon argument. II R. R. Guide showing Champion leaving N. Y. P. M. Baltimore 7:13 P. M. etc.

2562

U1, U2, U3, U4. Photos to be handed to court upon argument.

Defendant's Exhibit NN for identification is included in printing.

Defendant's Exhibits Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, not printed in record.

Government's Exhibits 1, 2, 3 to be handed to court upon argument; 5 to 17 reprinted from last record; 18 to 23 and 26 to 31A Government refuses to furnish copy. Exhibit 24, 2 pages of the six as that is all we have.

One partial list from search and seizure and partial testimony of Hoagland in search and seizure.

(4)

In a stipulation going to the District Court the above further reproduction of the argument as if it were the

Government  
18-A,  
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37; 1  
Q-1 Id  
U-1, 1  
GC Id

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Government's Exhibits 1, 2, 3, 4, 12, 14, 15, 16,  
18-A, 18-B, 19-A, 19-B, 19-C, 20, 21, 22, 23,  
27, 28, 29, 30, 31, 31-A, 32, 33, 34, 35, 36,  
37; Defendant's Exhibits A, D, E, G, I, Q,  
Q-1 Id., R Id.; R-1 Id., S Id., S-1 Id., T Id.,  
U-1, U-2, U-3, U-4, Y, Z Id., AA, BB to FF Id.,  
GG Id., HH Id., JJ Id.

Nothing contained in this stipulation shall be  
construed as a concession by the Appellee that matters  
pertaining to proceedings in the foregoing case subsequent  
to the sentence of the Appellant are properly a part of  
the record on this appeal.



*Stipulation.*

- 4) That the transcript of the record contains all matters required to be set forth by applicable rules, to the best of appellant's knowledge (excepting the exhibits).

2563

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the court upon the argument of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to the Appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the Appellee may, at his option, reprint such matter as an appendix to its brief or may require the Appellant to reprint such matter, and use such matter with the same force and effect as if reproduced herein.

2564

JACOB W. FRIEDMAN,  
*Attorney for Appellant.*

2565

JOHN F. X. McGOHEY,  
*U. S. Attorney,  
Southern District of New York.*

## Clerk's Certificate.

2566 United States of America, } ss.  
Southern District of New York. }

UNITED STATES OF AMERICA,  
*Appellee,*

vs.

ALVIN KRULEWITCH,  
*Defendant-Appellant.*

2567 WILLIAM V. CONNELL, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18 day of February in the year of our Lord one thousand nine hundred and forty-eight and of the independence of the said United States the one hundred and seventy-second.

2568

(SEAL)

WILLIAM V. CONNELL  
*Clerk.*

[fol. 857] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT, OCTOBER TERM, 1947

No. 217

(Argued April 5, 1948. Decided May 11, 1948)

Docket No. 20926

UNITED STATES OF AMERICA, Appellee,

against

ALVIN KRULEWITCH, Appellant

Before L. Hand, Augustus N. Hand and Chase, Circuit  
Judges

Appeal from a Judgment of the District Court for the  
Southern District of New York. Affirmed

John F. X. McGohey, United States Attorney for Appel-  
lee, Frederick H. Block, Bruno Schachner, John C. Hilly,  
Assistant U. S. Attorneys, of Counsel.

Jacob W. Friedman, Attorney for Appellant.

[fol. 858] CHASE, Circuit Judge:

This is an appeal from a judgment of conviction and sentence on appellant's fourth trial on the same indictment, the first having resulted in jury disagreement, the second in a conviction—reversed by this court on appeal—and the third in a mistrial. We assume familiarity with the opinion on the former appeal, *United States v. Krulewitch*, 145 F. 2d 76, and rely on that for a statement both of the nature of the charge, violating the White Slave Traffic Act \* and conspiring to do so, \*\* and of the evidence, much of which has again been shown, to the extent that it was there disclosed. Additional facts supported by the evidence will be referred to as necessary in discussing the points now relied upon for reversal.

The claimed errors are (1) that, after granting the appellant's motion to suppress certain evidence obtained through

\* 18 U. S. C. A. Secs. 398, 399.

\*\* 18 U. S. C. A. Sec. 88.

an illegal search of the appellant's apartment, the court admitted other evidence upon the assurance of the district attorney that it had been obtained independently of that search and without an investigation of its own to determine the truth of that assertion; (2) that the appellant was denied the right to show in cross-examination of the government's principal witness, Mrs. Sorrentino,<sup>†</sup> where that witness was living at the time of the trial; (3) that statements of a co-conspirator were admitted as evidence against the appellant though they were made after the alleged conspiracy was ended; (4) that a witness who testified concerning a conversation he had with the appellant about the rental of a lodging house in Miami, Fla., known as the El Chico Hotel, [fol. 859] was allowed to state his "understanding," gained from what the appellant said to him, of the use the appellant intended to make of the leased property; (5) that evidence tending to show that Mrs. Sorrentino had attempted to blackmail the appellant was excluded; (6) that the jury was instructed that a finding that the interstate transportation of the woman for an immoral purpose not amounting to prostitution would satisfy the requirements for conviction; (7) that the judge failed to charge that the evidence of the woman alleged to have been illegally transported by the appellant should be scrutinized closely and considered with great caution; (8) that certain requests to charge were erroneously denied; and, finally, (9) that an inquiry as to whether or not the jury might recommend clemency was inadequately answered. In addition the appellant while this appeal was pending moved in this court for a remand to the district court to enable him to proceed with an application for a new trial. The motion was denied with the proviso that if the district court saw fit to request a remand, the request would be granted. Appellant argues that the district court refused to make the request without sufficient investigation of the facts upon which appellant's motion was based.

In our opinion no reversible error has been shown. There were several instances when objection was made to evidence which the government sought to introduce; the objections being based on the assertion of appellant's counsel

<sup>†</sup> Also known as, *inter alia*, "Joyce," and so called on the earlier appeal.

that the evidence was the result of clues obtained in the illegal search. Each time, however, the evidence was admitted upon the assurance of the prosecuting attorney that the evidence had been made available by investigation independent of the search. The point now made is that, whenever a new item of evidence was challenged, the court was bound before admitting it to take testimony as to its origin. [fol. 860] It is, of course, now settled law in federal courts that evidence is inadmissible not only when obtained during an illegal search but if derived from information gained in an illegal search. *Weeks v. United States*, 232 U. S. 383; *Silverthorne Lumber Co. v. United States*, 251 U. S. 385; see also *Weiss v. United States*, 308 U. S. 321; *Nardone v. United States*, 308 U. S. 338; *Goldstein v. United States*, 316 U. S. 114. Moreover, once it is shown that the search is illegal, "the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree" at the same time leaving "ample opportunity to the Government to convince the trial court that its proof had an independent origin." *Nardone v. United States*, *supra* at page 341. How that shall be done must necessarily be left to the unabused discretion of the court, depending upon the circumstances, to the end that the defendant's rights be safeguarded and at the same time the needed continuity of the trial be preserved unbroken by a defendant's repeated and inadequately supported assertion that the evidence is of illegitimate origin. Needless to say, if the time and continuity factors were wholly disregarded, the disruptions of a criminal trial might well as a practical matter end only when the ingenuity and perseverance of counsel for the defendant had been exhausted. The necessarily somewhat elastic procedure for solving the problem is authoritatively stated in *Nardone v. United States*, *supra*, at page 342: "Therefore claims that taint attaches to any portion of the Government's case must satisfy the trial court with their solidity \* \* \* The civilized conduct of criminal trials cannot be confined within mechanical rules. It necessarily demands the authority of limited direction entrusted to the judge presiding in federal trials, including a well-established range of judicial discretion, subject to appropriate review on appeal, in ruling upon preliminary [fol. 861] questions of fact. Such a system as ours must, within the limits here indicated, rely on the learning, good



sense, fairness and courage of federal trial judges." We find here no violation of that rule. The evidence in question could have been procured wholly by investigation unconnected with the search for anything shown to have been thus discovered either as evidence or as leads to the evidence introduced. Defense counsel did no more than to assert that the evidence was unlawfully obtained. Under these circumstances, we think, the trial court's acceptance of the assurance of the prosecuting attorney, who presumably was in possession of actual knowledge as to the origin of the evidence, was not an abuse of discretion.

Mrs. Sorrentino, or "Joyce," the girl the appellant was accused of illegally transporting from New York to Florida, was the chief witness for the government. The first question asked her on cross examination was where she was then living. She said she did not "care to disclose that" and a direct answer was not then demanded. However, after she had been excused to permit other witnesses to testify and then been recalled and cross examined at some length, the following occurred:

Q. Where do you live now, Mrs. Sorrentino?

Mr. Hilly: Objected to if your Honor please.

A. I wouldn't say because he would be up there bothering me.

The Court: That question was asked the other day and she said she would prefer not to state it.

Mr. Hilly: If Mr. Todarelli wants the address I will give it to him, but I am not going to put it on the record. I do not think it is material on the record, if your Honor pleases. [fol. 862] Mr. Todarelli: I think we are entitled to know that, your Honor.

The Court: In my discretion I will exclude the question.

The Witness: Thank you.

Appellant claims this ruling was erroneous and it is true that the place where a witness for the government is living is undoubtedly a proper subject of cross examination. *Alford v. United States*, 282 U. S. 687. But unless the denial of the right to have the witness so testify deprives the defense of the information or of its timely production, the right, we think, can be of no importance to the defense except for the purpose of laying some foundation



for impeachment. Here the information was offered before the question was excluded. It was then available to the defense for the asking. Thus the appellant's only argument can be that he was wholly deprived of the opportunity to place the witness's testimony in its "proper setting" so that the jury might interpret it "in the light reflected upon it by knowledge" of her environment or to attack her credibility by, for example, identifying her with her community so that independent testimony could be sought and offered of her reputation for veracity there or by showing that her testimony in chief was biased because given "under the coercive effect" of her detention by federal officers. *Alford v. United States, supra*, at 691, 692, 693.

But here the witness's environment had already been brought out on direct, as well as cross-examination. It had already been shown that she had been a prostitute since her teens. She had admitted on cross-examination that she was living at the time of the trial in an illicit relationship and had been doing so for about eleven months. She had readily stated that she had previously lied about this [fol. 863] very case in a sworn statement to an F. B. I. agent. She had conceded that she had attempted to blackmail the appellant and that she had been arrested upon several occasions and spent time in at least three reformatories. Under these circumstances, it can hardly be said here, as it was in the *Alford* case, that "The trial court cut off *in limine* all inquiry on a subject with respect to which the defense was entitled to a reasonable cross examination."

Moreover, the witness was the same one characterized in our former opinion as "an unruly and extremely unstable person" and her actions at this trial disclosed by the record show as before that the judge was faced with a hysterical woman, probably never well balanced emotionally, and in any event enervated by a life from girlhood of carousing and debauch. And the court had the duty to protect her, as the *Alford* case states, "from questions which go beyond the bounds of proper cross examination merely to harass, annoy or humiliate" her. It could well have been thought that, if she were forced to disclose in open court the name of the man with whom she was living and their address, it was likely that she would thereby become even less controllable and thus would make it even more difficult to arrive at the

truth. When the information sought from her was offered the defense, we think it became a matter of discretion whether she should be forced to supply it, and that discretion we believe to have been exercised wisely under the circumstances.\*

[fol. 864] The evidence of the government supported its allegations that the witness just mentioned, Mrs. Sorrentino, was transported from New York to Florida by the appellant and that in so doing he acted in concert with Miss Sookerman, who had been indicted for that conspiracy, and convicted on the previous trial. It appeared on this trial that Mrs. Sorrentino had been arrested in December, 1941 upon her return from Florida and taken to Rochester, N. Y., where she was visited by Miss Sookerman. The witness was then permitted over the appellant's objection to testify that the co-conspirator, after having asked the witness if she had talked yet and been told that she had not, said to her, "Well, don't until we get you a lawyer." And then continued, "Be very careful what you say," followed by "It would be better for us two girls to take the blame than Kay [the defendant] because he couldn't stand it, he couldn't stand to take it." The objection was that the alleged conspiracy ended with the transportation and that this statement of the co-conspirator, having been made thereafter, consequently was not binding upon this appellant. See *Fiswick v. United States*, 329 U. S. 211, 217; *Galatas v. United States*, 8 Cir., 80 F. 2d 15, 23-24, cert. denied, 297 U. S. 711. But while it might conceivably be held that this evidence was admissible to show appellant's intent,\* we prefer to rest our decision on another ground. We think that im-

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\* The witness of course should not have volunteered, "I wouldn't say because he would be up there bothering me," as from this the jury might have inferred that her reason for refusing to state her address was fear of retaliation by appellant. Cf. *People v. Shapiro*, 255 App. Div. 380. But no objection on this score or motion to strike this testimony was made, and we do not think the failure of the trial court to strike this testimony or declare a mistrial on its own motion was a "plain error" within Rule 52(b) of the Federal Rules of Criminal Procedure.

\* Cf. *United States v. Rubinstein*, 2 Cir., 151 F. 2d 915, cert. denied, 326 U. S. 726.

implicit in a conspiracy to violate the law is an agreement among the conspirators to conceal the violation after as well as before the illegal plan is consummated. Thus the conspiracy continues at least for purposes of concealment, even after its primary aims have been accomplished. The statements of the co-conspirator here were made in an [fol. 865] effort to protect the appellant by concealing his role in the conspiracy. Consequently, they fell within the implied agreement to conceal and were admissible as evidence against the appellant. Cf. *United States v. Goldstein*, 2 Cir., 135 F. 2d 359; *Murray v. United States*, 7 Cir., 10 F. 2d 409, cert. denied, 271 U. S. 673. While *Bryan v. United States*, 5 Cir., 17 F. 2d 741,\* is by implication directly to the contrary, we decline to follow it.

Another government witness testified that he was the tenant in a store on the ground floor of a lodging house in Miami, Florida, known as the El Chico Hotel, and that the appellant inquired of him if he could "lease the upstairs." The witness then testified that he told the appellant that he didn't have anything to do with the upstairs and told him where he could find the owner of the building. When asked if he had any further conversation with the appellant, the witness said he tried "to find out what was going in upstairs," and asked the appellant some questions. Asked if the appellant "made answers to those questions," the witness testified: "He made some sort of an answer; it has been so long ago that I can't remember exactly what it was. Seemingly there was something said that he led me to believe they weren't going to sell merchandise or something upstairs, they were going to operate." He was then asked, "And after your conversation with this man did you have any understanding as to what—from your conversation with him—did you have any understanding as to what the place was going to be used as?" Objection was made on the ground that the answer called for the "conclusion" of the witness but the answer was allowed and was, "In accordance with my belief at that time the gentleman led [fol. 866] me to believe that there was going to be the same as had been operated there sometime before a house of prostitution." A motion for a mistrial was at once made.

\* See also *Galatas v. United States*, 8 Cir., 80 F. 2d 15, 23-24, cert. denied, 297 U. S. 711.

and the court, before ruling upon it, asked the witness whether the understanding he had just stated was the result of something the defendant said to him. The witness answered that it was and added over objection that if he had been asked that question at the first trial he would very likely have been able to answer it but that he couldn't recall the exact words. The motion for a mistrial was then denied.

What happened here did not offend the rule excluding opinion of a lay witness. Here the witness, as commonly occurs, was trying in vain to reproduce the identical language used in a conversation he had had so long before that his memory was unequal to the task. As he said, "It has been quite some time ago, but it is to the best of my recollection; I was trying to find out what was going on upstairs." He then was permitted to give his understanding of what was said to him—in effect the substance of what was said. The evidence was the best that the circumstances permitted and was properly put before the jury for whatever it was worth. 7 Wigmore on Evidence, §§ 1962, 1969; *United States v. Cotter*, 2 Cir., 60 F. 2d 689, 693-94, cert. denied, 287 U. S. 666; *Central R. Co. of New Jersey v. Monahan*, 2 Cir., 11 F. 2d 212, 213-14.

The appellant attempted to show that he had made a complaint to the police that Mrs. Sorrentino had tried to extort money from him after she had returned from Florida and they had become estranged. This evidence was excluded. Perhaps it was admissible to corroborate his testimony of the attempted blackmail by showing that he acted at once as a man so threatened might reasonably be expected to act. But the fact that Mrs. Sorrentino had tried to blackmail appellant had no relevance except in so far as it showed her bias and prejudice against him and consequently reflected upon her credibility as a witness. And there was no issue as to the fact that she had tried to blackmail the appellant. She freely admitted it and also made it abundantly clear that she testified against him with all the fury of a woman scorned. At most the ruling was quite harmless.

It is true that in charging the jury the court did not clearly distinguish transporting for the purpose of prostitution, or commercialized vice, from doing so for the purpose of debauchery or other immoral purposes and defined prostitution too broadly as being "the practice of sexual

intercourse between a man and a woman outside of the marital relationship," leaving the jury free to convict if it found that the transportation was for any of these purposes. The objection taken was not based upon any faulty definition of terms, which would doubtless have been corrected had it been called to the court's attention, but "on the ground that there is no evidence in the record that would indicate that the Government maintains that she [Mrs. Sorrentino] was taken there [Florida] for immoral purposes." The appellant's purpose in transporting the woman from New York to Florida was of course all important. *Mortensen v. United States*, 322 U. S. 369; *Cleveland v. United States*, 329 U. S. 14. What was done in Florida after the transportation was relevant only as indicative of that purpose. Though the government did put its emphasis upon the evidence showing acts of prostitution by Mrs. Sorrentino in Florida after the transportation, done with the appellant's knowledge and approval and to his pecuniary gain, it did not abandon any other alleged purposes for which he transported her there and which the statute made criminal. He admitted, as Mrs. Sorrentino or "Joyce" had testified at length, that he had had illicit relations with her before he went to Florida. He also testified that he went [fol. 868] there soon after she and the woman who was convicted as his co-conspirator, sometimes known as "Betty," had gone and that when he reached Miami he went to the El Chico Hotel where he found the two women. When asked where he stayed then, he answered, "At the El Chico." The next question was "Where did Joyce stay?" and his answer was "With me." The following question was, "Where did Betty stay?" and he answered "At the El Chico." The reasonable import of this testimony is that Joyce stayed with him at the El Chico during that time to continue to engage in their previous activities while Betty merely stayed at the El Chico. The jury thus had evidence from which it could find that at least part of the appellant's purpose in transporting Joyce to Florida was the immoral one of continuing his illicit relations with her as an occasion offered. So we find no error in the broad submission of the case to the jury.

Exception was taken because of the failure to charge, as requested, to the effect that Mrs. Sorrentino's testimony should be considered with great caution and subjected to



the closest scrutiny by the jury. This might have been done and *Speiller v. United States*, 3 Cir., 31 F. 2d 682, does hold that it is reversible error not so to charge concerning the testimony of the woman alleged to have been illegally transported, at least where it is uncorroborated and the woman has committed perjury. But here, while it is true that Mrs. Sorrentino had made a sworn statement to an F.B.I. agent wholly at odds with her testimony on the trial as to appellant's part in the trip to Florida, her testimony at the trial was corroborated in several material respects. Moreover, this jury had ample warning that the witness was ill disposed toward the appellant and there was no reversible error in failing to add to the usual instructions as to credibility special ones in the requested language. *Cf. Hillard v. United States*, 4 Cir., 121 F. 2d 992, 1000, cert. [fol. 869] denied, 314 U. S. 627. The substance of the remaining requests to charge which were denied and now relied on were all adequately covered in the charge as given.

While the jury was deliberating it sent to the court an inquiry as to whether or not it might make a recommendation for clemency. The judge called the attention of counsel for the parties to the request and told them that he intended to answer it, "Yes." No objection was made nor request that the answer be qualified in any way. Now it is argued that the judgment should be reversed because the judge did not recall the jury and answer their query in open court or indicate also that such a recommendation would not be binding upon him. See *Miller v. United States*, 37 App. D. C. 138, cert. denied 231 U. S. 755; *People v. Sherwood*, 271 N. Y. 427, 3 N. E. 2d 581; *People v. Lynch*, 284 N. Y. 239, 30 N. E. 2d 577; *People v. Roppolo*, 263 App. Div. 995; and *People v. Santini*, 221 App. Div. 39. This informal way of disposing of the request without recalling the jury was here but a harmless irregularity, *Dodge v. United States*, 2 Cir., 258 Fed. 300, cert. denied, 250 U. S. 660, the situation not being comparable to that shown in *Little v. United States*, 10 Cir., 73 F. 2d 861. As to the judge's failure to tell the jury that he would not be bound by their recommendation, the state court cases seem to be in conflict as to whether this was erroneous at all. Compare *People v. Warner*, 289 Mich. 516, 286 N. W. 811; and *People v. Roppolo*, *supra*, with *State v. Cook*, 227 Iowa 1212, 290 N. W. 550, and *State v. Gill*, 14 So. Car. 410; see also 17,



A. L. R. 1158; 87 A. L. R. 1371 and 138 A. L. R. 1247; cf. *United States v. Parker*, 3 Cir., 103 F. 2d 857, 863, cert. denied, 307 U. S. 642. But we need not decide which line of authority to follow. It is sufficient to say here that we think there was no "plain error." Consequently, appellant's failure to object is binding upon him. Rules of Criminal [Vol. 870] Procedure 51, 52(b). Assuming there was an error it was one of omission which should have been called to the judge's attention for it is just such errors that, if noticed, can easily be corrected on the spot. See, e.g., *United States v. Monroe*, 2 Cir., 164 F. 2d 471, 474.

The last question concerns matters arising after judgment and appeal. While the appeal was pending there was a motion in this court for a new trial which was treated as an application to remand to the district court for decision on that motion. We so remanded and the trial judge denied the motion upon the affidavits filed and argument of counsel thereon without taking testimony. It is now urged that doing so was error. The only support for the motion was an affidavit by the bailiff in charge of the jury to the effect that while the jury was deliberating the forelady called him to the door of the room and requested him to ask the judge whether the jury might return a divided verdict. He did not inform the judge of the request but told the forelady at once that a divided verdict could not be returned. At the hearing before the district judge the government not only relied on an affidavit of the forelady denying that she made any such request of the bailiff or that he had answered as his affidavit indicated but also on another affidavit of the bailiff categorically repudiating his first affidavit and supporting the forelady's denial that the episode had taken place. Upon such a weak showing the district judge was well within the exercise of his sound discretion in denying the motion without further investigation as to the actual facts. It does not appear that any reason was given him to believe that further investigation would add evidence to support the motion and the credibility of the bailiff was so shaken by his repudiation of his first affidavit that the affidavit of the forelady was, and should have been, held sufficient to defeat the motion on the facts.

Judgment affirmed.

[fol. 871] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND  
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 11th day of May, one thousand nine hundred and forty-eight.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

v.

ALVIN KRULEWITCH, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 872] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Alvin Krulewitch. 217. Judgment. United States Circuit Court of Appeals, Second Circuit. Filed May 11, 1948. Alexander M. Bell, Clerk.

[fol. 873] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 874] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1947

No. —

ALVIN KRULEWITCH, Petitioner,

v.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI

Upon Consideration of the Application of Counsel for  
Petitioner

It Is Ordered that the time for filing petition for writ  
of certiorari in the above-entitled cause be, and the same  
is hereby, extended to and including July 10, 1948.

Robert H. Jackson, Associate Justice of the Supreme  
Court of the United States.

Dated this 9th day of June, 1948.

[fol. 875] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1948

The petition herein for a writ of certiorari to the United  
States Court of Appeals for the Second Circuit is granted,  
limited to question "3" presented by the petition for the  
writ.

And it is further ordered that the duly certified copy of  
the transcript of the proceedings below which accompanied  
the petition shall be treated as though filed in response to  
such writ.



IN THE  
**Supreme Court of the United States**

October Term 1947.

ALVIN KRULEWITCH,

*Petitioner.*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

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Petition and Brief for a Writ of Certiorari to the United  
States Circuit Court of Appeals for the Second Circuit.

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JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1947

ALVIN KRULEWITCH,

*Petitioner,*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

**Petition for a Writ of Certiorari to the United States  
Circuit Court of Appeals for the Second Circuit,**

*To the Honorable Chief Justice of the United States and  
the Associate Justices of the Supreme Court of the  
United States:*

Your petitioner, Alvin Krulewitch, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, to review a judgment of that Court entered on May 11th, 1948, affirming a judgment of the District Court of the United States for the Southern District of New York, entered in that Court on April 25th, 1947, convicting petitioner of a violation of 18 U. S. Code, Secs. 398 and 399 (transporting a woman in interstate commerce for purposes of prostitution), and Sec. 88 (conspiracy to commit the same offense), after trial before Hon. James P. Leamy, District Judge, and a jury (R. 16; numerical references in this petition and the

subjoined brief, unless otherwise indicated, relate to pages of the transcript of record). Petitioner also presents for review an order of the District Court made on December 2d, 1947, denying a request for remand of the cause so that a hearing might be held on his application to set aside the judgment on the ground of false answers given by the forelady of the jury on the voir dire in concealing her prior employment in close conjunction with the Federal Bureau of Investigation for four years, and on the further ground of misconduct of the bailiff in charge of the jury in giving the jury instructions as to and during its deliberations (11). A separate appeal was taken from the order denying the motion and was heard together with the principal appeal.

### **Statement of Matters Involved.**

It is charged in the indictment (11-16) in three counts that petitioner (who will be referred to herein as the defendant), together with one Rose Sookerman, a codefendant (not tried herein): firstly, persuaded and induced one Elizabeth Mary Johnston to go from New York City to Miami, Florida, on October 20th, 1941, for the purpose of prostitution; secondly, transported or caused her to be transported from New York City to Miami, Florida, for that purpose; and thirdly, conspired with the codefendant to commit those offenses.

Defendant was arrested on December 6, 1941, and was released in bail conditioned upon his appearance to answer the charge in Florida. Upon the adjournment of the United States Grand Jury for the Southern District of Florida in February, 1942, the United States Attorney for that district issued a certificate that there would be no prosecution against defendant, his appearance bond was released and cancelled and the matter was terminated so far as any prosecution in Florida was concerned (80-86).



The case was tried four times. The first trial was had before Flaney, *D. J.*, and a jury from July 7th, 1943, to July 13th, 1943, and resulted in a disagreement (2). The second trial was had before Porterie, *D. J.*, and a jury from August 25th, 1943, to September 1st, 1943, and resulted in a conviction (2), which, however, was reversed by the Circuit Court of Appeals on August 1st, 1944, with an opinion by Learned Hand, *Circ. J.* (2), reported in 145 F. 2d 76. The third trial was had before Moskowitz, *D. J.*, and a jury on February 18th and 19th, 1946, and resulted in a mistrial (2). The fourth trial, occurring from April 9th to 25th, 1947, resulted in the conviction now being presented for review (3).

During the last trial the District Court conducted an inquiry on defendant's application to suppress evidence illegally seized. This hearing was held in the absence of the jury and resulted in the granting of defendant's motion (9, 105-106, 225-227).

The jury made a recommendation of leniency (762) after specific instructions by the Court on that subject (761-762).

Defendant was sentenced to two years' imprisonment, to be followed by two years' probation (767).

Upon the imposition of sentence the District Judge stated that "there are some questions," and forthwith admitted defendant to bail pending appeal (767).

The notice of appeal was duly filed on April 30th, 1947 (10); and supplemental notice of appeal from the order was filed on December 6th, 1947 (11). Judgment of affirmance was rendered on May 11th, 1948, in an opinion by Chase, *Circ. J.* On or about June 9th, 1948, the Circuit Court of Appeals granted a stay pending the filing of the present petition, and on the same day Mr. Justice Jackson signed an order extending the time of petitioner to file his petition for certiorari to and including July 10th, 1948 (869).



### Questions Presented.

The questions involved and the grounds of appeal are briefly as follows:

1.

Since the trial Court granted defendant's motion to suppress evidence obtained by an illegal search and seizure, the Government's use of evidence derived therefrom without proof of an independent source was improper, and it was reversible error to accept the prosecutor's naked assurance in lieu of such proof.

2.

The trial Court's refusal to require the Government's chief witness to disclose where she resided at the time of the trial was prejudicial and reversible error, in plain contravention of this Court's holding in *Alford v. U. S.*, 282 U. S. 687.

3.

It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator after the termination of the alleged conspiracy and not in furtherance thereof.

4.

The reception, over objection, of the testimony of the witness Peacock as to his understanding that the premises were to be used for purposes of prostitution was prejudicial and reversible error.

The trial Court erroneously excluded the testimony of a police detective offered to show bias and prejudice of the complaining witness arising out of defendant having lodged a complaint against her of attempted extortion.

Although the essence of the offense charged against defendant was transportation for prostitution, the trial Court erroneously charged the jury that transportation for a mere immoral purpose sufficed to warrant a conviction, and in this connection erroneously defined prostitution in a confusing, misleading charge.

The trial Court's refusal to charge as requested that the testimony of the complaining witness should be considered by the jury with great caution and subjected to the closest scrutiny was under the circumstances reversible error.

The Court's bare affirmative answer to the jury's written question, transmitted during their deliberations, as to whether they could recommend leniency, was erroneous as tending to induce a verdict of conviction which might not otherwise have been reached.

It was error to deny defendant a hearing on controverted issues of fact raised by his motion for a new trial based upon the grounds that the forelady of the jury had fraudulently concealed her prior employment by the Government and that a bailiff in charge of the jury presumed to give the jury instructions during the course of their deliberations.

### Reasons for Allowance of Writ.

The basic reasons petitioner urges for the allowance of certiorari herein are substantially the same as the propositions outlined as constituting the questions presented above.

That the proposed appeal is a meritorious one appears from the 13-page opinion of the Circuit Court of Appeals. Petitioner urged some ten major points of law, all of them substantial and arguable. The opinion discussed most of the points and clearly recognized that the questions presented were not free from difficulty. *Inter alia*, the Court referred to the holding in *Alford v. U. S.*, 282 U. S. 687; and, it is submitted, failed to distinguish it. Secondly, the Court approved the procedure of the District Judge in accepting the assurance of the prosecutor as to the source of evidence (in lieu of proof) when the evidence was challenged—despite the prior adjudication that there had been an unlawful search and seizure. Thirdly, the Court cited the Third Circuit's holding in *Speiller v. U. S.*, 31 F. 2d 682, but chose to declare a contrary rule. Fourthly, on an important question relating to the admissibility of evidence, the Circuit Court of Appeals stated its holding to be different from that in another circuit, saying:

"While *Bryon v. U. S.*, 5th Cir., 17 F. 2d 741, is by implication directly to the contrary, we decline to follow it."

Fifthly, the Circuit Court of Appeals admitted (864) that the trial Judge did not in his instructions clearly distinguish the two types of prosecution under the statute involved. Sixthly (866), the same Court admitted that on a point relating to the jury's recommendation, "the state court cases seem to be in conflict". The above-mentioned considerations are only a few of the matters that are indicative that the case presents numerous difficult questions of law, all of them appropriate for further review.

In conjunction with all of the points of law, petitioner insists, as he has consistently declared and reiterated throughout this long and debilitating prosecution, that he is altogether innocent of the offenses with which he is charged. The dismissal of the Florida proceedings at the very outset, the four trials, the disagreement, the reversal of one conviction, the difficulty confronting each jury, the recommendation of leniency, the Government's oppressive methods, the tainted and unreliable character of the evidence employed against him—these and a myriad other circumstances suggest that this is no mere routine case wherein an offender seeks some device to evade punishment. This background gives added weight and cogency to each argument herein advanced. While the points made are doubtless available to every aggrieved litigant, they are most certainly tenable in the case of an individual who, though innocent, has been adjudged otherwise through the tenacious hatred and jealousy of an unscrupulous woman. The most charitable view to be taken of the Government's case is that the case is a close one, wherein especially sedulous care must be exercised to discover whether any important right of petitioner's has been denied or prejudiced, for in such circumstances an error that

might elsewhere be condoned or disregarded could easily have sufficed to turn the scales of the verdict against him. "Finally, if the record shows error, but does not disclose whether the error is prejudicial or whether it is not prejudicial; it is presumed to be prejudicial and to require reversal." (*Ah Fook Chang v. U. S.*, 91 F. 2d 805.)

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit commanding said Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that the petitioner may be granted such other and further relief as may seem proper.

Dated: New York, N. Y., July 8, 1948.

ALVIN KRULEWITCH,  
*Petitioner.*

By JACOB W. FRIEDMAN,  
*Counsel for Petitioner.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1947.

ALVIN KRULEWITCH,  
*Petitioner.*

AGAINST

UNITED STATES OF AMERICA,  
*Respondent.*

**BRIEF IN SUPPORT OF PETITION.**

**Opinions Below.**

The opinion of the Circuit Court of Appeals for the Second Circuit is reported in 167-F. 2d 943. It is annexed to the certified transcript of the record heretofore filed herein.

No opinion was rendered by the United States District Court for the Southern District of New York, except the opinion condemning the unlawful search and seizure and granting defendant's motion to suppress (105-106).

**Jurisdiction.**

The judgment of the Circuit Court of Appeals now sought to be reviewed was entered on May 11th, 1948, and



petitioner's time to file for certiorari was extended by Mr. Justice Jackson to and including July 10th, 1948. The jurisdiction of the Supreme Court of the United States is invoked under Section 240(a) of the Judicial Code, as amended, also known as 28 U. S. Code, Sec. 347.

### Statutes Involved.

The statutes involved are Title 18, Sections 398 and 399, United States Code, and Title 18, Section 88, United States Code. They read as follows:

#### "TITLE 18, SECTION 398, U. S. CODE

Section 398. WHITE-SLAVE TRAFFIC; TRANSPORTATION OF WOMAN OR GIRL FOR IMMORAL PURPOSES, OR PROCURING TICKET. Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give her-

self up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, c. 395, Section 2, 36 Stat. 825.)

#### TITLE 18, SECTION 399—U. S. CODE

##### (Re: White Slave Traffic)

399. Same; inducing transportation for immoral purposes.—Any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than \$5,000,

or by imprisonment for a term not exceeding five years or by both such fine and imprisonment, in the discretion of the court: (June 25, 1910, c. 395, § 3, 36 Stat. 825.)

TITLE 18, SECTION 88—U. S. CODE

88. (CRIMINAL CODE, SECTION 37.) CONSPIRING TO COMMIT OFFENSE AGAINST UNITED STATES.—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. Section 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, Section 37, 35 Stat. 1096.)

**Statement of the Case.**

We do not desire to extend this brief unduly by a protracted review of the facts. The case against defendant rests almost in its entirety on the testimony of Elizabeth Johnston, also variously known as Elizabeth Mary Sorrentino, Joyce Winters, Joyce Winston, Mrs. Curtis and otherwise (47). The substance of her testimony, viewed in the light most favorable to the Government, was tersely outlined in the opinion of the Circuit Court of Appeals on the first appeal (145 F. 2d 76), Learned Hand, *Circ. J.*, writing:

"The substance of the testimony, most of which was that of a professional prostitute, Joyce, was as follows. Shortly after Joyce had made the acquaintance of the accused, he took her to Chicago where he tried to get her to live in a brothel. She

refused and came back to New York, where later she and the co-defendant, Sookerman, lived in various apartments where they practiced prostitution; and this was known to defendant. In October, 1941, the accused suggested to her and Sookerman that they should go to Miami and should there ply their calling. They agreed and the accused took them to Miami with him and installed them in a hotel which he had leased and where they 'worked', paying over their earnings to him. Later Joyce became ill and again returned to New York."

All of the foregoing, to the extent that it incriminated defendant, was flatly denied by him (585), an individual who has been in a reputable and substantial advertising business for many years (512-518). The Circuit Court of Appeals in the same opinion made the following comment upon her testimony and credibility:

"She was undoubtedly an unruly and extremely unstable person, she had been wayward from the outset of her career, and had early served a term in a reformatory \* \* \* a hysterical woman, probably never well balanced emotionally, and in an event enervated by a life from girlhood of carousing and debauch \* \* \* her ungoverned moods and caprices \* \* \* Joyce herself was shown to be to the last degree untrustworthy."

The purpose of these comments by Learned Hand, *Circ. J.*, was to show that it was error on the trial then being reviewed to withhold from defendant for use on cross-examination a certain signed statement of the witness squarely at variance with her testimony. The Court thus described it:

"Joyce had been questioned at her home by an agent of the Federal Bureau of Investigation on December 8, 1941, thirteen months before the indictment was filed; she signed a written statement of five pages which the agent took away with him, and which completely exculpated the accused, saying that she and Sookerman had gone to Miami of their own choice, to 'work' there on their own account; that the accused had nothing whatever to do with their going, although he had gone down later and had seen them; and that the witness had never had any illicit relations with him."

As to this contradictory statement alone the Court observed:

"\* \* \* We surely cannot say that this circumstantial story so totally at variance with her testimony, might not have created enough doubt to turn the scales in favor of the accused."

If she had already been "shown to be to the last degree untrustworthy", we can fairly urge that this formal declaration, actually used on the last trial, operated well-nigh conclusively to deprive her testimony of any trace of credibility, and that the conviction was necessarily chargeable to the many other serious errors that were committed.

That the same witness did not make a better showing on the last trial appears from the following observations in the opinion of Chase, *Circ. J.* (861):

"It had already been shown that she had been a prostitute since her teens. She had admitted on cross-examination that she was living at the time of the trial in an illicit relationship and had been doing so for about eleven months. She had readily stated



that she had previously lied about this very case in a sworn statement to an F. B. I. agent. She had conceded that she had attempted to blackmail the appellant and that she had been arrested upon several occasions and spent time in at least three reformatories."

We reiterate that the conviction sought to be reviewed rests almost exclusively upon the testimony of this unsavory witness.

### Specification of Errors to Be Urged.

It is intended to urge the following errors:

1.

Since the trial Court granted defendant's motion to suppress evidence obtained by an illegal search and seizure, the Government's use of evidence derived therefrom without proof of an independent source was improper, and it was reversible error to accept the prosecutor's naked assurance in lieu of such proof.

2.

The trial Court's refusal to require the Government's chief witness to disclose where she resided at the time of the trial was prejudicial and reversible error, in plain contravention of this Court's holding in *Alford v. U. S.*, 282 U. S. 687.

3.

It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator after the termination of the alleged conspiracy and not in furtherance thereof.



4.

The reception, over objection, of the testimony of the witness Peacock as to his understanding that the premises were to be used for purposes of prostitution was prejudicial and reversible error.

5.

The trial Court erroneously excluded the testimony of a police detective offered to show bias and prejudice of the complaining witness arising out of defendant having lodged a complaint against her of attempted extortion.

6.

Although the essence of the offense charged against defendant was transportation for prostitution, the trial Court erroneously charged the jury that transportation for a mere immoral purpose sufficed to warrant a conviction, and in this connection erroneously defined prostitution in a confusing, misleading charge.

7.

The trial Court's refusal to charge as requested that the testimony of the complaining witness should be considered by the jury with great caution and subjected to the closest scrutiny was under the circumstances reversible error.

8.

The Court's bare affirmative answer to the jury's written question, transmitted during their deliberations, as to whether they could recommend leniency, was erroneous as tending to induce a verdict of conviction which might not otherwise have been reached.

It was error to deny defendant a hearing on controverted issues of fact raised by his motion for a new trial based upon the grounds that the forelady of the jury had fraudulently concealed her prior employment by the Government and that a bailiff in charge of the jury presumed to give the jury instructions during the course of their deliberations.

### ARGUMENT.

#### 1.

Since the trial Court granted defendant's motion to suppress evidence obtained by an illegal search and seizure, the Government's use of evidence derived therefrom without proof of an independent source was improper, and it was reversible error to accept the prosecutor's naked assurance in lieu of such proof.

Defendant's premises had been searched and his papers and property seized in violation of the prohibition of the Fourth Amendment. He duly applied to the trial Court to have that evidence suppressed. In this motion he was successful, the Court concluding that the search and seizure did not constitute a lawful incident of the arrest, but were wholly exploratory and general and made solely to find evidence of defendant's guilt (79, 87-102, 103-106); that defendant had not consented to the search or done anything else to legalize it. A formal ruling was made that all the evidence so illegally obtained should be suppressed, and the Government was ordered to return to defendant his conceded belongings (225-227).

Nevertheless, the Government throughout the trial continued to introduce evidence which was quite clearly the

fruit and outgrowth of the outlawed search (*e. g.*, 56-58, 410, 418-419, 391-401, 221-224, 340-342, 382-390, 362-365, 611). Much of this evidence was resisted by defendant via objection and motion to strike (56-58, 418-419, 421, 391-393). Thus, when defendant objected to important testimony of the witness Levenson and the prosecutor maintained that he had obtained Levenson's name and address from the codefendant, defendant demanded that the statement of the codefendant be produced for the purpose of verifying the prosecutor's assertion. Instead of requiring its production as sought by defendant, the Court declined to direct that it be produced and stated that on the assurance of the United States Attorney the Court would admit the testimony (393, 418, 409-412). The sequence of proof in his connection is most illuminating. The witness Levenson was called by the Government. He was a Baltimore furniture manufacturer and the uncle of defendant by marriage (391). The substance of his testimony was that on October 21st, 1941, defendant called on him in Baltimore and "said that he wanted to buy some furniture for some hotel in Florida," which furniture he proceeded to buy (394). The damaging implications of this testimony are obvious. As soon as this witness was called, defendant interposed this objection (361):

"An objection is made to the testimony of this witness on the ground that the evidence which he will give is based upon information received from papers found in the search of December 6, 1941."

To this the United States Attorney answered (391):

"The Government's position is that this witness was not located from the information given or obtained on December 6, 1941, but was obtained as a result of conversations had with the defendant Rose Sookerman, and with the witness Mrs. Sorrentino."

The Court ruled (391):

"With that assurance I will permit the testimony."

Defendant's counsel thereupon pointed out that among the papers seized were the bills of furniture from the witness; the prosecutor did not dispute this but insisted (392):

"We maintain, as I have previously stated, that this lead on this witness was obtained through Betty Sookerman or Rose Sookerman, when a statement was obtained from her. \* \* \* The defendant Sookerman gave his name and address."

Defendant's counsel then stated, with the result indicated (393):

"I think you ought to produce that statement, if the Court please. I do not think we have a right, representing this defendant, to rely on that statement of the District Attorney. If he has a statement of Sookerman I feel that he ought to produce it."

The Court: Can you?

Mr. Hilly: Your Honor, I haven't got the original statement—wait a minute. I can get the original statement from the FBI.

Mr. Pinto: Your Honor—

The Court: Wait a minute, please, not two at a time.

Mr. Hilly: I have not got the original statement, but I have the statement as set forth in an FBI arrest report which came from Miami, Florida. If your Honor wants that and if you will grant me a two-minute recess I will go down to the office and find it.

The Court: No, on your assurance I will permit the testimony.

Mr. Pinto: Exception."

It later developed (412) that, while the prosecutor originally contended (391) that the information as to Levenson was obtained from both Rose Sookerman and Mrs. Sorrentino, he was unable to produce a statement from either. Yet the Court reiterated its ruling with respect to the desired production of any statement, saying to defense counsel, "You asked me to compel him to do it and I declined to do so. I said I would take his word for it."

Equally striking was the trial Court's attitude in connection with the testimony of the witness Blames concerning a baggage receipt taken from defendant's apartment. The Court said to the District Attorney (224-227):

"On your assurance that the testimony which you are about to introduce is not the fruit of the illegal search, I will receive the evidence."

No fair reading of the record can suggest that the procedure followed was approved by defendant, who was repeatedly voicing objections and taking exceptions, as appears above.

The Circuit Court of Appeals dealt with this point by recognizing the settled law in Federal courts that evidence is inadmissible not only when obtained during an illegal search but if derived from information gained in an illegal search," citing *Weeks v. U. S.*, 232 U. S. 383; *Silverthorne Lumber Co. v. U. S.*, 251 U. S. 385; *Weiss v. U. S.*, 308 U. S. 321; *Nardone v. U. S.*, 308 U. S. 338, and *Goldstein v. U. S.*, 316 U. S. 114. Nevertheless, the Court declared herein: "The trial Court's acceptance of the assurance of the prosecuting attorney, who presumably was in possession of actual knowledge as to the origin of the evidence, was not an abuse of discretion."



To summarize the situation with respect to the results of the illegal search and seizure, several occasions arose during the trial when defendant sought to exclude evidence improperly seized and its *sequelae*. Although the Court on the primary hearing had adjudicated the illegality of the search and ruled correctly as to the test document then immediately under consideration, we submit that the subsequent rulings were not well founded. It became and was the duty of the Court whenever a fresh piece of evidence was in good faith challenged, to take testimony as to its provenience. However cumbersome this procedure may appear in retrospect, we know of no other fashion whereby the rights of the defendant might have been adequately safeguarded. After all, the illegal search was the misconduct of the Government's own agents, and it should not be heard to complain if an inquiry was necessitated thereby. To say that in lieu of an investigation the Court was justified in accepting the prosecutor's bland assurance that the evidence came from an independent source, would be placing the rights of an accused at the mercy of the opinion of the individual charged with the prosecution. Whatever his integrity, it is surely reasonable to suggest that upon a nice evaluation of the genesis of some particular evidence his judgment might be clouded by the understandable zeal of advocacy. We are aware of no other adjudicated case in which the Court confronted with a problem arising upon the admissibility of evidence allegedly obtained by illegal search was held entitled to take the statement of the prosecutor as a substitute for proof. We submit, as we did below, that the rulings now presented for review were violative of the rights of the defendant under the Fourth Amendment of the Constitution of the United States.



The trial Court's refusal to require the Government's chief witness to disclose where she resided at the time of the trial was prejudicial and reversible error, in plain contravention of this Court's holding in *Alford v. U. S.*, 282 U. S. 687.

At the outset of the cross-examination of the complaining witness she stated in answer to a question that she was unwilling to say where she was then living (121-122, 124). The question was later repeated and objected to by the prosecutor (307-308), who was willing to give the address to defendant's counsel confidentially but insisted that it be not placed on the record, whereupon the trial Court excluded the question. In other words, the personal preference of the witness and the objection of the United States Attorney were deemed adequate basis for withholding from the jury the residence address of the chief witness and for foreclosing all further inquiry along those lines and the avenues to which it might lead. It should also be noted that the witness hinted that if defendant knew her address, he would molest her. Cf. *People v. Shapiro*, 255 App. Div. 380, 7 N. Y. S. 2d 607.

That this was undoubtedly erroneous appears from the decision of this Court in *Alford v. U. S.*, 282 U. S. 687. There a conviction of mail fraud was unanimously reversed solely on the ground that the trial Court erred in sustaining an objection to this single question propounded on cross-examination of one of the Government's witnesses: "Where do you live, Mr. Bradley?" In a well-reasoned opinion, citing numerous authorities, Mr. Justice Stone pointed out that the residence of a witness is a basic and fundamental subject of inquiry so "that the jury may interpret his testimony in the light reflected upon it by knowledge of his environment." In the absence of that

"proper setting," "the jury cannot fairly appraise" or "put the weight of his testimony, and his credibility to a test." Since "the trial Court cut off *in limine* all inquiry on a subject with respect to which the defense was entitled to a reasonable cross-examination," "this was an abuse of discretion and prejudicial error."

Our argument on this point was considered at some length by the Circuit Court of Appeals, and we submit that the attempted differentiation of the *Alford* case was not a sound one. The first distinction suggested is that the environment of the witness had already been brought out on direct and cross-examination and it had been established that she was a harlot, a prevaricator, a blackmailer and an ex-convict (1384-1385). To this our reply is threefold: The witness in the *Alford* case was also examined at great length and the fullest latitude had been permitted in other aspects of his examination (see p. 691 of that opinion); secondly, the more disreputable the witness, the more imperative it becomes that defendant should not be precluded from proving additional obloquy, for this one added opprobrious consideration may suffice to deprive the witness of the last shred of credibility; thirdly, to establish a precedent of withholding the address of a witness who has or may be otherwise discredited is dangerous, impracticable and uncertain in its application and grossly unfair to the accused.

The second purported distinction by the Circuit Court of Appeals was that in the light of the hysterical character of the witness and her emotional imbalance, to permit questioning as to her address would have annoyed or humiliated her to the point where she might have "become even less controllable," so that a wise discretion dictated that she be excused from furnishing this information. We are unable to perceive how a meticulous judicial solicitude for the feelings of a woman of this stamp should be permitted to outweigh the rights of a defendant whose liberty is at stake.

In any case this Court has announced in unequivocal language that the exclusion of such a question is an abuse of discretion and reversible error, and that should be the end of it.

## 3.

It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator after the termination of the alleged conspiracy and not in furtherance thereof.

The alleged conspiracy is supposed to have taken place in September and October, 1941 (13-14). The complaining witness was arrested in or about December, 1941 (109), by an agent of the Federal Bureau of Investigation and taken to Rochester, N. Y., from Canandaigua, N. Y. for a week (110), where she was visited by the defendant. It is absolutely evident that the conspiracy, if any, was now at an end, for certainly defendant and the codefendant were not conspiring to entice or transport the complaining witness after the latter had been arrested, and statements of the codefendant at this time could in no sense be regarded as in furtherance of the conspiracy. Nevertheless, when the complaining witness was asked to state the conversation with the codefendant on this occasion, and defendant objected on the ground that the conspiracy had terminated with the completion of the alleged transportation and this was no act in furtherance of the conspiracy, the trial Court overruled the objection (110-111). The witness was then permitted to testify as to a statement by the codefendant which, if true, fastened upon defendant a plain imputation of guilt (111-112). In a close case such evidence could easily have sufficed to turn the tide towards effecting a conviction. Nor can the prosecution consistently minimize the effect of the proof, for the great weight attached to it appears from the circumstance

that in the United States Attorney's opening statement to the jury, brief as it was, the very conversation was detailed at length (34-35), although even at that stage of the proceedings defendant objected unsuccessfully to all references thereto, duly noting an exception.

It is established by a long line of authorities, of which we need cite but a few, that an alleged statement made by a coconspirator, after the termination of the conspiracy and not in furtherance of the common design, is admissible only against himself and not against another conspirator, and where the other alone is on trial the statement is not admissible at all. *U. S. v. Alfano*, 152 F. 357; *Galatas v. U. S.*, 80 F. 2d 15; *Fiswick v. U. S.*, 329 U. S. 217, 91 L. Ed. 196.

While the Circuit Court of Appeals cited several of these cases, including the *Fiswick* decision, it declared them inapplicable notwithstanding the plain declaration in the *Fiswick* case that although the result of a conspiracy continue, it does not thereby become a continuing one; that confession after apprehension is not in furtherance of the enterprise but rather a frustration of it; and that even though it be part of the conspiracy to deceive the Government, admissions made to officers end it and are not admissible against erstwhile fellow conspirators.

The Circuit Court of Appeals justified the reception of the proof on the ground that implicit in a conspiracy there was an agreement among the conspirators to conceal the violation and that the conspiracy continued for purposes of concealment even after its primary aims had been accomplished (862, 863). The difficulty with this proposition is that the declarations in question were made in December, 1941 (105-112), after the arrest of the complaining witness (109) and after defendant himself and the codefendant had been arrested (575). Therefore, any supposed authorities rendering such statements admissible where their actual purpose is to avoid detection and arrest are plainly inapplicable.

In any case the Circuit Court of Appeals said on this score (863):

"While *Bryan v. U. S.*, 5 Cir., 47 F. 2d 741, is by implication directly to the contrary, we decline to follow it."

We are thus faced with a situation wherein the Second Circuit Court of Appeals expressly announces its disagreement with the Fourth Circuit Court of Appeals on an important and vexatious point of criminal procedure, and one which arises with great frequency in prosecutions for conspiracy. To the end that the difference of opinion in the several circuits be ended and the law authoritatively clarified, we submit that this element of the case alone, apart from the other weighty considerations, eminently calls for the granting of certiorari.

#### 4.

The reception, over objection, of the testimony of the witness Peacock as to his understanding that the premises were to be used for purposes of prostitution was prejudicial and reversible error.

Arthur S. Peacock was a Government witness, second in importance only to the complaining witness. He owned a bicycle shop in the premises defendant was charged with having rented for purposes of prostitution. His testimony was to the effect that October 1st, 1941, defendant came into his store and inquired about leasing the quarters upstairs (235-236). Peacock told him that the building had recently been sold and informed him where he might find the new owner (236). The witness seeming to have some difficulty in recalling, the prosecutor asked him the following question (237):



"And after your conversation with this man did you have any understanding as to what, from your conversations with him did you have any understanding as to what the place was going to be used as?"

An unsuccessful objection was interposed to this question as calling for a conclusion, and the witness answered (237):

"In accordance to my belief at that time the gentleman led me to believe that there was going to be the same as had been operated there sometime before a house of prostitution."

A motion for a mistrial in consequence of this answer was denied (237-239). It further appeared that the same witness had testified on the first and second trials, both of which had taken place almost four years prior to the trial now under review; that on each of these occasions he had been asked to give his conversation with defendant, and in neither instance had he mentioned a word about prostitution (240, 244, 249, 253-256); that before he took the stand on the present trial the Assistant United States Attorney in charge of the prosecution had had a conversation with him and had directed his attention to the fact that he had previously omitted to mention the house of prostitution (242). While we dislike to dwell on this phase of the Government's preparation, it is enough to say that even if the testimony were competent, it can hardly be viewed as of a character entitling it to favorable consideration.

The law of evidence does not countenance proof of this kind. A witness is not permitted to state the impression made upon him by oral statements, or to testify as to the meaning or his understanding of a conversation. *Fish v. Wise*, 52 F. 2d 544, cert. den. 284 U. S. 688; *Fields*



v. *Capeland*, 121 Ala. 644, 26 So. 491; *Whitmore v. Ainsworth*, 4 Cal. Unrep. 872, 38 P. 196; *Dicht v. State*, 157 Ind. 549, 62 N. E. 51; *State v. Brown*, 86 Iowa 121, 53 N. W. 93; *Peerless Mfg. Co. v. Gates*, 61 Minn. 124, 63 N. W. 260. The mere fact that the testimony as to understanding is a sequel to testimony concerning a conversation does not thereby render it admissible. *Higgins v. Dakin*, 86 Hun 461, 33 N. Y. S. 890. "The opinion, the thought, the understanding of the witness was not evidence." *People v. Sharp*, 107 N. Y. 427.

It is therefore clear that in both civil and criminal cases courts have uniformly declared that witnesses should not be permitted to advance their own speculations or conjectures as to what they understood from conversations with other persons. It is obvious that testimony of this type is probative of nothing and is susceptible of the greatest abuse, of which no more vivid instance could be conceived than that presented by the case at bar. The testimony of Peacock dealt with the very essence and core of the charge. His testimony as to the actual subject-matter of his conversation with defendant was quite innocuous, as it had been on two prior trials. But when the prosecution passed beyond the stage of requiring the witness to narrate his recollection of what he had seen and heard and called for his understanding, this passed beyond the limits permitted by the law of evidence and injected into the trial a conclusion without factual foundation and one that was patently damaging to defendant. This would be error in any case, and is especially so in one so closely litigated, wherein even a slight deviation from the strictest legal safeguards might have operated to induce a conviction. Conversely, had there been a sound ruling on the point, as the Circuit Court of Appeals remarked when it reversed the former conviction herein, "we surely cannot say that this . . . might not have created enough doubt to turn the scales in favor of the accused."

In attempting to justify the ruling, the Circuit Court of Appeals cited two of its own prior decisions and one text. The first case was *U. S. v. Coffey*, 60 F. 2d 689, cert. den. 285 U. S. 666, where a codefendant, himself on trial, was asked in a mail fraud case whether he did not consider the conduct of the business irregular; this was held proper as testing his own good faith, and that the most trial judge need have done—which was not requested—was to tell the jury they should not impute the guilty knowledge of the witness to the other defendants. The other case was *Central R. Co. of New Jersey v. Monahan*, 11 F. 2d 213, holding that “it would have been better to allow the conductor to say whether he could have felt the jerk where he was standing, and whether it was necessary for him to give a starting signal in addition to the movement of the dwarf switch”; even there the Court said with regard to rulings sustaining objections to questions calling for the opinion of the witnesses, “These were probably correct, according to the orthodox American canon.”

The Circuit Court of Appeals, as we have indicated, cited one text, namely, 7 Wigmore on Evidence, Secs. 1962, 1969. But in this situation the late Professor Wigmore, as in others, advanced theoretical views which he admitted to be at variance with the great weight of authority. An inspection of his footnotes discloses that fourteen jurisdictions which have had occasion to consider the question exclude testimony as to the impression or understanding a witness has derived from a conversation (Arkansas, California, District of Columbia, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Ohio and Vermont). In five jurisdictions the law seems to be unsettled, cases having been reported both for the admission and exclusion of the evidence (Alabama, Iowa, Kansas, Mississippi and Nebraska). In one lone jurisdiction (Michigan) the re-

ported case is in favor of the admission. Accordingly, there can be no question that the overwhelming weight of authority condemns the use of testimony of the type we have complained of in this point.

In brief, the established law bars evidence of the understanding of a witness though derived from a conversation. A violation of this rule, where manifestly prejudicial, necessitates a reversal of a judgment of conviction. The adoption of the Circuit Court of Appeals of an important rule of evidence which contravenes principles laid down by the great weight of other judicial authority calls for correction on certiorari.

## 5.

The trial Court erroneously excluded the testimony of a police detective offered to show bias and prejudice of the complaining witness arising out of defendant having lodged a complaint against her of attempted extortion.

Defendant called as a witness one Slattery, a detective of the New York City Police Department (504), who testified that in 1942, shortly before this prosecution began, defendant called at the station house and had a talk with him. On the objection of the Government the conversation was excluded, and defendant excepted, after a formal tender of proof wherein it was explained that the purpose of the evidence was to show that defendant was lodging a complaint of attempted extortion against Mrs. Sorrentino, which resulted in bias and prejudice on her part and furnished a motive for testifying falsely against him (504-505).

The exclusion of this proof was contrary to established law, as set forth in *People v. Kadel*, 95 Misc. 514, 160 N. Y. S. 817; *People v. Michalove*, 229 N. Y. 325, 331; *Hale v. U. S.*, 25 F. 2d 430, 438; *U. S. v. Scuff*, 274 F. 629; and *Abbott's Criminal Trial Practice*, 4th Ed., Sec. 327.

The Government's answer to this argument was that the proposed proof would not have established that the complaining witness herein (Mrs. Sorrentino) had heard of the charge of attempted extortion made against her by defendant. The difficulty with this contention is that the Government's objections precluded the proof's development. It is scarcely logical for the prosecution to stifle the proof and subsequently, in justification, rely upon its inadequacy or incompleteness. Nor is it significant that Mrs. Sorrentino admitted the extortion attempt, for what defendant sought to prove was the circumstances attendant upon his attempt to institute a prosecution therefor. (284-285).

## 6.

Although the essence of the offense charged against defendant was transportation for prostitution, the trial Court erroneously charged the jury that transportation for a mere immoral purpose sufficed to warrant a conviction, and in this connection erroneously defined prostitution in a confusing, misleading charge.

The indictment formally accuses defendant (11-16) of inducing the complaining witness to go in interstate commerce for prostitution, debauchery and other immoral purposes and with transporting her and conspiring so to do.

The nature of the prosecution is limited by the Government's opening statement declaring that defendant is charged with persuading and transporting "for the purposes of prostitution" (627).

Mrs. Sorrentino's testimony (72) is to that effect.

The opinion of the Circuit Court of Appeals on the first appeal (145 F. 2d 76), in its opening sentence, characterized the conviction as being one "for transporting a woman in interstate commerce for purposes of prostitution." Nor was this a mere inadvertence, for the Court

proceeded to distinguish the Eighth Circuit decision in *Ellis v. U. S.*, 138 F. 2d 612, wherein "the indictment was for transporting girls, not for purposes of prostitution, but for purposes of lechery."

So the case is clearly one of a charge of transporting a woman for prostitution, or commercialized vice, and not to gratify defendant's own immoral designs. Indeed, the latter putative aspect of the case was not so much as mentioned in the recital of the facts contained in the United States Attorney's last brief filed in the Circuit Court of Appeals herein (p. 5 thereof).

While the word "prostitution" is well understood to mean "the offering, by a woman, of her body, to indiscriminate intercourse with men for hire" (Funk & Wagnalls New Standard Dictionary, p. 1990), and, as used in the Mann Act, means "commercialized vice" (*Johnson v. U. S.*, 215 F. 679), the trial Court herein ignored two important matters in its charge on this point: (1) the commercial or penal implications of the term; and (2) that the accusation against defendant was thus circumscribed. On this crucial phase of the case the entire charge is extremely confusing (746-753), of which confusion the following excerpts are illustrative (748, 749-750):

"Prostitution is the practice of sexual intercourse between a man and woman outside of the marital relationship. \* \* \*

"Did this defendant cause this girl to travel in interstate commerce for immoral purposes? \* \* \*

"You are to deal with each of the counts of the indictment separately and you are to determine under counts 1 and 2 from the evidence here whether or not this defendant persuaded the girl Sorrentino to be transported, or even aided or assisted in obtaining transportation for her in interstate commerce for immoral purposes, debauchery, or



prostitution. If he did he is guilty under counts 1 and 2."

"The following exception to the charge was noted by defendant (760-761):

"We respectfully except to the charge of the Court that this defendant can be convicted if it is found that the girl was taken to Florida by him, or caused to be taken there for immoral purposes, on the ground that there is no evidence in the record that would indicate that the Government maintains that she was taken there for immoral purposes. The entire proof is that she was taken there for commercialized prostitution."

The distinction we urge is neither subtle nor tenuous, but runs to the very foundation of the prosecution. The record is replete with evidence, and, indeed, it is undisputed that there was an illicit relationship between defendant and the complaining witness, but this was never claimed to constitute the basis for the indictment. Nevertheless, on the foregoing instructions the Court permitted the jury to convict defendant upon a finding that he persuaded her to go to Florida for purposes of lechery. And if by any construction it may be urged that the Court sufficiently stressed prostitution as a *sine qua non* for a guilty finding—although we submit that the language employed is not susceptible of any such interpretation—then the complete effect of a proper understanding was vitiated by the erroneous definition of prostitution as consisting of "the practice of sexual intercourse between a man and woman outside of the marital relationship."

The correctness of the position taken by defendant on this point is supported by the holding of the First Circuit Court of Appeals in *Malaga v. U. S.*, 57 F. 2d 822.



wherein proof of one type of the offense was held not sufficient to justify a conviction where the theory of prosecution was the commission of the other type; the Court carefully differentiated between the two types of conviction permissible under 18 U. S. C. Sections 398, 399, and disapproved of instructions relating to one when the prosecution was for the other. See also the holding of the Fourth Circuit Court of Appeals in *Van Pelt v. U. S.*, 240 F. 346. We submit that in view of the sharp distinction between the two permissible classes of prosecution under the statute, it was clearly reversible error, this being the case of one type, to submit the issues to the jury under instructions permitting conviction upon a finding that the case fell within the second classification.

That the District Court seems to have misconceived the distinction appears further from its erroneous refusal to grant defendant's second request to charge, to which refusal exception was duly noted (761). That request was as follows (738):

"In this prosecution, the Court is not concerned with any unconventional relationship between the defendant and the witness Sorrentino. If the jury find that they had been living together, though not married, and that the trip to Florida was planned as an incident of such relationship, and for no other purpose, the defendant must be acquitted."

The refusal to instruct in the above manner was, of course, entirely consistent with the Court's attitude in failing to establish any distinction between the two classes of purposes which might underlie the commission of the offense. We believe it needless to labor the point that defendant was necessarily prejudiced by the omission to acquaint the jury with the distinction involved.

The charge seems to call for the application of the salutary observations in *Bollenbach v. U. S.*, 326 U. S. 613, 90 L. Ed. 318, where it was pointed out that the influence of the trial judge on the jury was necessarily of great weight; that the jurors were constantly on the alert as to his every word; that his last remarks, especially in a criminal trial, were apt to be decisive; that if a ruling on a vital issue were misleading, it could not be considered as cured by a prior unexceptional and unilluminating abstract charge; and that a misdirection at this stage of the case could not be classified as a technical error not affecting substantial rights.

The Circuit Court of Appeals, in discussing our contentions under this point (864-865), conceded that in charging the jury the trial Court "did not clearly distinguish" between the two types of prosecution, and also gave the jury an incorrect definition. The Circuit Court of Appeals also admitted that the Government did put its emphasis upon one type rather than the other, but attempted to enlarge the scope of the prosecution to justify a conviction of the second type. We submit that this rationalization did not palliate the evident errors in the instruction. Moreover, no mention whatsoever was made of the cases cited from other jurisdictions.

## 7.

The trial Court's refusal to charge as requested that the testimony of the complaining witness should be considered by the jury with great caution and subjected to the closest scrutiny was under the circumstances reversible error.

Defendant duly submitted to the Court a number of requests for charge, including the following (740-741):

"15. The testimony of the witness Sorrentino must be considered by the jury with great caution and must be subjected to the closest scrutiny, and unless the jury are convinced beyond a reasonable doubt of the truth of her testimony, the defendant should be acquitted.

"16. If the jury find that the statement made by the witness Sorrentino to Mr. Trost, an agent of the Federal Bureau of Investigation, on December 9, 1941, was substantially correct, the defendant should be acquitted.

"17. In evaluating the testimony of the witness Sorrentino you should take into consideration her earlier record, her previous relationship with the defendant, her apparent desire to harm defendant; the fact that she admittedly made a false charge of intimidation against the defendant; her attempt to extort money from him; and any other facts which might affect the quality of her testimony, as well as inconsistent testimony on earlier trials.

"18. If the jury are in doubt as to where the truth lies as between the testimony of the witness Sorrentino and her contrary statement to Mr. Trost, exonerating the defendant, the defendant is entitled to the benefit of that doubt and he must be acquitted."

None of these requests was granted, the Court merely giving the brief, standard instruction as to the credibility of witnesses in general (745).

At the conclusion of the charge defendant duly excepted to the refusal to give the instructions requested (761).

We do not regard it as necessary to review the entire record as establishing the justification for the requested

instructions. The Circuit Court, as stated above, had already sufficiently characterized the complaining witness, referring to her as "a professional prostitute", "an unruly and extremely unstable person", "wayward from the onset of her career", one who "had early served a term in a reformatory", and as one "who was shown to be to the last degree untrustworthy". Nothing contained in the present record detracts in the most minute degree from the foregoing considered appraisal, and, indeed, if anything, she appeared on this trial as even less deserving of credibility. Under these circumstances it would seem that defendant was absolutely entitled to have the jury charged substantially in the manner requested and that the Court's refusal to comply constituted a grave deprivation of his rights.

*Speiller v. U. S.*, 31 F. 2d 682, presents a close parallel to the instant case. There defendant had been convicted of a like offense on the testimony of an admitted prostitute, who prior to the trial had made one statement as to the purpose of a trip from Pennsylvania to Maryland, and upon the trial repudiated her earlier statement and testified to the contrary. Moreover, she had made a false accusation against the defendant in a state court proceeding—as in the present case the complaining witness had falsely caused defendant to be charged with intimidation. Defendant Speiller requested the trial Court to instruct the jury that the testimony of the witness involved should be scrutinized by the jury with the greatest caution. The request was refused for the reason that it was not made in time. The Circuit Court of Appeals for the Third Circuit reversed the conviction, holding:

"The defendant requested the judge to charge the following point: 'The Government's sole witness, Mary Hudkinson, admitted having sworn falsely,

and her testimony should be given the greatest scrutiny and considered with the greatest caution. \* \* \* Under these circumstances, while the request of the defendant was not submitted in time, the jury should have been instructed, even without request, that her testimony should be subjected to careful scrutiny and considered with great caution.

It has elsewhere been held (*Anderson v. U. S.*, 157 F. 2d 429), that the absence of adequate exception to failure to give instruction to view with distrust the testimony of a witness which should have been so regarded, would not preclude an appellate court from considering such an error. The instruction was of a sort that was regarded as mandatory.

Accordingly, we have herein a case where the conviction rests virtually in its entirety on the testimony of one witness, whose depravity and past conduct were surely such as to necessitate an admonition to the jury regarding the evaluation of her testimony specifically; where due request therefor was made and refused; and where exception was properly noted. In a case so closely contested, wherein the jury could reach a verdict only upon an assurance of leniency, it is impossible to say that such an omission did not induce or influence a verdict against defendant, or that prejudice did not necessarily result.

The Circuit Court of Appeals (865-866) referred to the Third Circuit decision in *Speiller v. U. S.*, 31 F. 2d 866, and admitted that that case held it to be reversible error to omit such a charge concerning the complaining witness. The attempted differentiation that the witness was corroborated and that the jury had ample warning of her hostile disposition towards defendant, is, we submit, not sufficient to excuse the omission to instruct.

The Court's bare affirmative answer to the jury's written question, transmitted during their deliberations, as to whether they could recommend leniency, was erroneous as tending to induce a verdict of conviction which might not otherwise have been reached.

The point we are about to argue was one that came up so suddenly and unexpectedly, that defendant's counsel, doubtless through failure to appreciate its grave significance, did not object at the time. Nevertheless, we are constrained in this situation to invoke Rule 52 (b) of the Rules of Criminal Procedure, which provides as follows:

"Plain errors or defects affecting substantial rights may be noted although they were not brought to the attention of the Court."

This rule was recently applied in *Care v. U. S.*, 159 F. 2d 464.

After the jury had been deliberating for two hours, the following proceedings occurred (761-762):

"The Court: For the record. Gentlemen, I have received this communication from the jury:

"Your Honor, may the jury make a recommendation for leniency?" Signed "K. R. Swift."

"And I intend to answer that, yes."

Seven minutes later the jury returned with a verdict convicting the defendant on all counts (762), together with its recommendation for leniency.

We submit that the foregoing construction given in response to the jury's interrogation, was erroneous and highly prejudicial. To begin with, although this is inci-



dental to the main argument, there should have been no communication between the Court and the jury on any material matter without the jury's returning to open court (*Little v. U. S.*, 73 F. 2d 861; *Dodge v. U. S.*, 258 F. 300, cert. den. 250 U. S. 660, 63 L. Ed. 1194). The sole materiality for present purposes of the circumstance that the instruction was given in the form of a message is as stated in *People v. Hatlock*, 267 App. Div. 4030, 48 N. Y. S. 2d 108, where the Court wrote:

"We know of no authority for such procedure. If the jury desired further instructions it should have been recalled and such instructions given in open court with full opportunity to the defendant to be present, to take exception to the instructions as given and to request further instructions."

That is to say, the correct procedure outlined in the case cited would have facilitated the noting of an exception and a request for further and proper instructions. The substantial phase of the error consisted in the proposition that the Court actually had no right to give a simple affirmative answer to the question propounded. It is true that a Court may in its discretion advise the jury on the subject of a recommendation of leniency, but it is imperative that such advice simultaneously make it clear that the Court is neither legally nor morally bound by the recommendation. A recent concise statement of the rule is set forth in 23 C. J. S. 1053, and the rationale of the rule is discussed in *Miller v. U. S.*, 37 App. D. C. 138; *People v. Santini*, 221 App. Div. 430, 222 N. Y. S. 683; *People v. Sherwood*, 271 N. Y. 427; *People v. Lunch*, 284 N. Y. 232 and *People v. Rappola*, 263 App. Div. 995, 33 N. Y. S. 2d 257.

The application of the principles laid down in the foregoing authorities to the present case shows that the sup-

plementary instruction was plainly of a character calculated to induce a compromise verdict among jurors who otherwise continued to entertain doubts or misgivings as to defendant's guilt. The suggestion from the Court that leniency might serve the ends of justice in such a difficulty undoubtedly pointed a way to relieve them of further responsibility and to curtail more extended deliberations. It is scarcely necessary to argue that grave prejudice necessarily ensued and forestalled an impartial determination of the sole issue of guilt or innocence.

The Circuit Court of Appeals admitted (pp. 866-867) that, so far as the judge's failure to tell the jury that he would not be bound by their recommendation was concerned, the state court cases seemed to be in conflict as to whether this was erroneous. However, the point was rejected for the express reason that it was not plain error and that any irregularity in this connection should have been raised immediately so that it could have been corrected on the spot.

## 9.

It was error to deny defendant a hearing on controverted issues of fact raised by his motion for a new trial based upon the grounds that the forelady of the jury had fraudulently concealed her prior employment by the Government and that a bailiff in charge of the jury presumed to give the jury instructions during the course of their deliberations.

On October 6, 1947 (768-770), defendant petitioned the Circuit Court of Appeals to remand the cause to the trial judge so that the latter might pass upon his application for a new trial which was predicated upon two grounds relating to the composition and conduct of the jury. The first ground was that Kathryn R. Swift, who was the forelady of the jury, when being impaneled and interrogated as to

whether she was ever employed by the Government, answered in the negative (772-773). She admitted in her answering affidavit that she had been employed in the United States Government's Office of Censorship in New York City from 1941 to 1945, but denied that on the voir dire examination she was asked whether she had ever been employed by the Government (787-788).

As far as the bailiff aspect of the motion was concerned, defendant submitted the affidavit of the bailiff himself, who stated that he was in charge of the jury during its deliberations, when the following occurred (76):

"During the course of the aforesaid jury's deliberation said jury informed me that they desired further instructions of the trial Court with respect to their deliberations and with respect to their conclusions. I was informed by said jury at the time that they desired further instructions of the trial Court as to bringing in a divided verdict. I did not report this request to the jury to the trial Court but instead I thought it proper on my part that I could give them instructions as to that request and I thereupon informed the jury that they could not bring in a divided verdict but that they must bring in a unanimous verdict one way or the other. This occurred at about 5:00 P. M. of that day. I further informed the jury that it was unnecessary for me to deliver their request to the trial Court and I told them they could return to their deliberations."

In opposition the United States Attorney submitted another affidavit from the same bailiff, sworn to about three months later, in which he denied that the foregoing took place (783-787).

On October 10, 1947, the Circuit Court of Appeals denied defendant's motion in a memorandum stating that if the trial Court, after hearing and consideration, saw fit to request that the cause be remanded, that request would be granted, but limited this determination to the point of the supposed communication of the bailiff with the jury (7-5).

In pursuance of this ruling, on a date appointed by the trial judge, which was November 17, 1947, defendant applied at Rutland, Vt., for a judicial inquiry and hearing and an opportunity to submit proof and testimony in support of the application (796).

At the outset of the argument defendant challenged the regularity of the designation of Leamy, *D. J.*, to hear in Vermont an application on a matter pending in the Southern District of New York (800-801).

We cannot within the limits of this brief detail the entire argument, but respectfully refer the Court to the record (800-821), from which the position of the defendant clearly appears. In substance, it was argued on behalf of defendant that issues of fact were raised by the affidavits in support of and in opposition to the application; that these issues could not possibly be resolved by a mere perusal of the papers; and that it was incumbent upon the Court to conduct a hearing at which witnesses could be sworn and their credibility evaluated. To this we may add that the decision of the Circuit Court of Appeals of October 10, 1947, required the District Judge to make a determination whether to request a remand "after hearing." It is self-evident that the argument of counsel before the learned judge did not constitute any hearing at all, and we urge that the determination made by him on November 28, 1947, that no request for remand should be made (822-823) was a *colative* of the Circuit Court's ruling and independently erroneous. In fact, the letter written

by the Court to the prosecutor two months before the "hearing" (792) demonstrates that it had prejudged the application.

On December 5, 1947, defendant served and filed a supplemental notice of appeal (853), bringing up for review the order of the District Court directing that no request for remand be made.

While we appreciate that on the motion to remand, the Circuit Court of Appeals, by limiting the *nisi prius* consideration to the transactions between the bailiff and the jury, in effect ruled that it regarded the untruthful answer by the juror as legally inconsequential, we again adverted to the point in the Circuit Court of Appeals both so that that Court might reconsider its previous views and also to preclude any claim that we have abandoned it. We submit that upon a showing that the proposed juror had recently been employed as a confidential agent of the Government, working in the Censorship Office on criminal matters in collaboration with agents of the Federal Bureau of Investigation, the denial that she had ever been employed by the Government became most important. If defendant was not technically entitled to challenge her for cause on that ground, sound judgment would have dictated the use of a peremptory challenge in the circumstances. The leading case on the subject is *Clark v. U. S.*, 289 U. S. 1, 77 L. Ed. 993, where Mr. Justice Cardozo wrote:

"A talesman when accepted as a juror becomes a part or member of the court. — *In re Savin*, 131 U. S. 267, 9 S. Ct. 699, 33 L. Ed. 150; *United States v. Duchs* (D. C.), 36 F. 2d 601. The judge who examines on the *voir dire* is engaged in the process of organizing the court. If the answers to the questions are willfully evasive or knowingly untrue, the



talesman, when accepted, is a juror in name only. His relation to the court and to the parties is tainted in its origin; it is a mere pretense and sham. What was sought to be attained was the choice of an impartial arbiter. What happened was the intrusion of a partisan defender. If a kinsman of one of the litigants had gone into the jury room disguised as the complaisant juror, the effect would have been no different. The doom of mere sterility was on the trial from the beginning."

See also *Anthony v. Schofield*, 266 App. Div. 905, 42 N. Y. S. 2d 784; *McHugh v. Jones*, 258 App. Div. 111, 16 N. Y. S. 2d 332, affd. 283 N. Y. 534; *People v. Leonti*, 262 N. Y. 256; *Baker v. Hudspeth*, 129 F. 2d 779; *Carpenter v. United States*, 100 F. 2d 716 and *Chambers v. United States*, 237 F. 513. No Court should place the stamp of approval upon a trial wherein one of the jurors gives untruthful information upon a *voir dire* examination and thereby forecloses a person charged with crime from exercising the prerogative of peremptory challenge.

So far as the second phase of the application is concerned, we believe that the Circuit Court of Appeals considered the proposition as being presumptively meritorious and that when it ordered a hearing it intended that the Court below should take testimony and ascertain by a full-dress inquiry whether the bailiff had transgressed in the fashion charged. What the trial Court did was merely to permit counsel to argue the matter, and this of course did not meet the most elementary requirements of a hearing.

The bailiff's original affidavit, presented by defendant, shows that he was informed by the jury that they desired further instructions; that he did not report their request to the Court but actually presumed to instruct them that they could not bring in a divided verdict but had to return



a unanimous verdict one way or another; he further told them that it was unnecessary for him to deliver their request to the judge but that they could resume their deliberations.

If this was what happened, and the recanting affidavit of the bailiff does nothing more than becloud the question with uncertainty, we are bound to characterize his conduct as a most flagrant invasion of the rights of a defendant on trial for his liberty. We do not think it necessary to detail the numerous cases condemning unauthorized communications with the jury by any person connected with the Court, and even by the Court itself in the absence of a defendant and his counsel. Several illustrative situations are *Chang v. United States*, 91 F. 2d, 805; *Little v. United States*, 73 F. 2d, 861; *Wheaton v. United States*, 133 F. 2d, 522; and *United States v. Sorcey*, 151 F. 2d 899. The Supreme Court of the United States held, in *Mattox v. U. S.*, 146 U. S. 140, 150, 36 L. Ed. 917, that it would not tolerate any grounds of suspicion that the administration of justice had been interfered with, and would not even require a showing that a tampering had really taken place, saying further (by Mr. Chief Justice Fuller):

“Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.

Indeed, it was held in *People v. Knapp*, 42 Mich. 267, that the presence of an officer during the deliberations of the jury is such an irregular invasion of the right of trial by jury as to absolutely vitiate the verdict in all cases without regard to whether any improper influences were actually exerted over the jury or not. And in *State v. Snyder*, 20 Kan.

306, where the bailiff, who had charge of the jury, had been introduced and examined as a witness on behalf of the State and had testified to material facts against the accused, his presence in the jury room during the deliberations of the jury was held fatal to the verdict."

Under the foregoing authority (see also Housel and Walser, "Defending and Prosecuting Federal Criminal Cases," Sec. 696), defendant was entitled that the issues raised should be made the subject of a full inquiry at which witnesses could testify and be cross-examined under oath. This right was denied, and we submit the ruling was error.

The rule making a hearing mandatory is clearly explained in the *Sorcey* case, 151 F. 2d 899. There, the Circuit Court of Appeals for the Seventh Circuit, after discussing the familiar rule that a jury should pass on a case free from external influences tending to disturb the exercise of deliberate and unbiased judgment, and the corollary that communications between jurors and officers in charge of the jury were absolutely forbidden, said:

"And where, upon a motion for a new trial, it is claimed that communications have taken place and competent evidence is offered to substantiate the claim it is the duty of the Court to hear and consider it."

That duty is not discharged by a summary refusal to permit any witnesses to be called or examined on the subject.

Notwithstanding the holding of the Seventh Circuit in *U. S. v. Sorcey*, 151 F. 2d 899, the Circuit Court of Appeals herein ignored that authority and summarily con-

cluded that the showing made by defendant was not sufficient to justify a further investigation, a conclusion we believe to be palpably erroneous.

### CONCLUSION.

For the reasons stated in the petition and in this brief, it is respectfully submitted that the application for a writ of certiorari should be granted.

Dated: New York, New York, July 7, 1948.

Respectfully submitted,

JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*



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IN THE  
**Supreme Court of the United States**

October Term 1948.

No. 143.

ALVIN KRULEWITCH,

*Petitioner.*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

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PETITIONER'S REPLY BRIEF.

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JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*





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**PETITIONER'S REPLY BRIEF.**

In replying herein to the several arguments of the Solicitor General, we shall preserve the point or paragraph numbering employed both in our main brief and in the Government's brief.

1. Our first point raised the grave question whether it is proper in a case where there has concededly been an illegal search, when the source of evidence is duly challenged, to accept the prosecuting attorney's unsupported declaration of independent origin in place of independent proof. The Government admits that the trial judge did act on the prosecutor's assurance (p. 7). For example, when the prosecutor said the important Leyenson evidence was uncovered by a statement of the codefendant Sookerman and not from papers taken in the search, "though the court accepted this assurance (R. 391, 392), petitioner nevertheless stated that he thought the prosecutor should

be compelled to produce the Sookerman statement in question" (R. 393)—the language quoted being from the Government's brief (footnote, p. 8). On like objection elsewhere asserted (226-227), the trial judge again accepted the prosecutor's assurance. On this the Government states (p. 7), "Petitioner registered no further objection to the reception of the evidence in question." We believe the objection once raised suffices to preserve the point and that there is no requirement of a repetitious chant to the same effect. The Government concludes (pp. 8-9) that "the trial judge appropriately exercised his discretion in admitting the evidence after receiving the prosecutor's assurance that the evidence had an independent origin." Surely the substitution of assertion (and that by one of the advocates in the cause) for proof on a point of high constitutional right was not the intention in *Nardone v. U. S.*, 308 U. S. 338, nor is judicial discretion to be invoked in this fashion as a bludgeon of liberty.

2. We submit that the Government has completely failed to distinguish the controlling authority of *Alford v. U. S.*, 282 U. S. 687, 75 L. Ed. 624. To begin with, it is contended (p. 11) that the environment of the witness had already been developed aliter. We reiterate that in the *Alford* case, too, the witness had been examined at great length concerning his relation to the appellant and considerable latitude had been accorded in that examination (Opinion, p. 691). Nor is it of any importance that the Government was willing to furnish the witness's address confidentially to petitioner's counsel, for if it could not be revealed to the jury and made the foundation of cross-examination it was of no value. The emotional instability of the witness strikes us as being a most outlandish excuse for curtailing the rights of a defendant on trial for his liberty. Finally, the Government invokes the *Alford* case (Opinion, p. 694) as imposing upon the trial

court the duty of protecting a witness "from questions which go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate." Unfortunately, the very language quoted is misleading, for in the next ensuing sentences Mr. Justice Stone declared:

"But no such case is presented here. The trial court cut off *in limine* all inquiry on the subject with respect to which the defense was entitled to a reasonable cross-examination. This was an abuse of discretion and prejudicial error."

In substance the attitude of the prosecution is mainly that petitioner was not prejudiced since, it is speculated, cross-examination along the line proposed might not have served further to discredit the witness. The best answer we can give to the proposed adoption of such a dangerous rule is to quote again from what Mr. Justice Stone said in the *Alford* case:

"To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial."

3. In connection with the erroneous reception in evidence over objection of declarations by a coconspirator after the conspiracy's termination and not in furtherance thereof, the Government makes no mention of the fact that at the time of the declarations the witness, the co-defendant and defendant had all been arrested (909-112, 575). Certainly under those circumstances any alleged conversation did not take place with the knowledge or acquiescence of the petitioner. Not only was the ruling contrary to the principles announced in *Fiswick v. U. S.*, 329

U. S. 217, 91 L. Ed. 196, but was admitted by the Circuit Court to be directly contrary to the Fifth Circuit holding in *Bryan v. U. S.*, 17 F. 2d 741. The *Bryan* case is not so much as mentioned in the Government's brief. Inasmuch as a conflict in the several circuits on a fundamental point of criminal procedure constitutes a characteristic basis for certiorari, it would appear that no effective answer can be made to the self-evident proposition that such a conflict exists.

4. The only attempted justification by the Government for the admission of Peacock's testimony as to his "understanding" of a conversation is a quotation from the opinion of the Circuit Court of Appeals that the witness was in effect stating the substance of what was said. However, this was not an instance of a witness who was unable to remember verbatim and therefore was requested to give the substance of a conversation. Actually his memory had been probed in this respect both on this trial and on previous trials *ad nauseam*, and it appeared that he actually had no understanding at all of any such alleged content of the conversation. The objectionable passage of his testimony, it is rather apparent, was nothing more than an irregular and clumsy attempt to introduce a prejudicial aspect without the slightest warrant in fact. The Government quietly ignores our discussion of the law wherein we seek to show that the overwhelming weight of judicial authority condemns such purported proof. Approval of such a ruling is a dangerous precedent for future prosecutions, and an inquiry on certiorari appears quite in order.

5. The Government asserts concerning the excluded testimony of the police detective, that the argument does not avail petitioner in the absence of proof or offer of proof that Johnston ever heard of petitioner's reporting

the matter (pp. 17-18). This contention is untenable. It is generally necessary that proof be submitted in a certain order, and if one component of it is excluded, the introduction of the remainder is superfluous. If petitioner was not allowed to offer proof of the complaint to the police officer, it is pointless to suggest that the excluded proof was insufficient. When the prosecution has scotched an effort to submit competent evidence, and the objection is not predicated on the absence of foundation, elementary fairness would dictate that the incompleteness of the proof should not thereafter be available to the Government in justification of the exclusion. It is almost needless to say that petitioner would have brought the knowledge home to Johnston had the opportunity been afforded.

6. In attempting to answer our point based on the faulty and misleading instructions relating to prostitution, the Government admits (p. 18) that the court "inadvertently defined prostitution too broadly"—a criticism of the charge which was likewise conceded by the Circuit Court of Appeals herein—but insists that petitioner's objection in this connection was directed against the submission to the jury of the personal immorality theory. It is quite true that we contend against the propriety of the submission of the lechery theory (in view of the unmistakable position taken by the prosecution and therefore litigated by petitioner to the exclusion of the other type of charge). What the Government completely overlooks is the refusal to charge as requested (738, 761) that the planning of the Florida trip as a mere incident of an immoral relationship theretofore existing was not sufficient basis for a conviction. Actually, it has been held in a number of cases such as *Fisher v. U. S.* (C. C. A. 4), 266 F. 667, *U. S. v. Grace* (C. C. A. 2), 73 F. 2d 294, and *Sloan v. U. S.* (C. C. A. 5), 287 F. 91, that the mere fact of illicit relations incidental to a trip does not warrant



prosecution under the statute. Thus in the *Sloan* case it was held:

"The mere fact that the journey from one state to another, if followed by such intercourse, when the journey was not made for that purpose formed in the state from which the transportation was made, cannot be regarded as a violation within the meaning of the act" (sic).

Likewise, in *Hunter v. U. S.* (C. C. A. 4), 45 F. 2d 55, the Court held:

"It was not intended to make unlawful a journey from one state to another, though followed by unlawful cohabitation, where the journey was not with a view to the accomplishment of that purpose."

The rule is well stated in *Yoder v. U. S.* (C. C. A. 10), 80 F. 2d 665:

"The government charged what the statute condemns, an interstate transportation for an immoral purpose. The government offered proof of such purpose. The defendant offered evidence that the trip was made for an entirely different purpose—a business reason. The jury should have been left to decide the issue. Instead the court charged in substance that whatever may have been the reason that brought about the trip, there must be a conviction if Yoder intended to have sexual commerce with her while away. No matter how vagrant and fleeting that intent, no matter that it did not influence in the slightest degree the decision to make the trip, still, the court charged, there must be a conviction if Yoder harbored the intent to continue his relations with her. This is substantial error."



The only authority to which the Government refers in this connection is *Caminetti v. U. S.*, 242 U. S. 470, 61 L. Ed. 442, wherein, as is correctly noted, the scope of the statute was extended to embrace both types of violation. Reference to this fundamental and admitted proposition is not to be regarded as a substitute for refutation of the entirely different points made. Moreover, the reiteration (p. 19) by the Government of the Circuit Court's speculation that the trial judge would doubtless have corrected the faulty definition had it been called to his attention, is hardly an answer. The refusal to charge as requested (738) was amply indicative that the trial judge entertained an erroneous view of the law, which he had proceeded to impart to the jury. It is placing too much of a burden upon the defendant to require that, in addition to a correct request, he must presume to rectify the judge's English and specifically revise an erroneous definition which is at variance with the request. Upon a consideration of the whole picture, it is evident that the situation required precise and clear exposition; that the instructions could not have failed to leave the jury in a Serbonian morass of confusion; that the petitioner made a reasonable effort to have the law clarified, but without success; that the Circuit Court and the Government alike find difficulty in extenuating the error on this vital aspect of the case; and that the resulting prejudice is plainly within the scope of this Court's ruling in *Bollenbach v. U. S.*, 326 U. S. 613, 90 L. Ed. 318.

7. The Government attacks our point relating to the refused instruction regarding the scrutiny and caution in the evaluation of Johnston's testimony and seeks to turn it into a point on the need for corroboration of the testimony of an accomplice. This was not our intention. We made it clear that we relied on *Speiller v. U. S.* (C. C. A. 3), 31 F. 2d 682, as holding it to be error to refuse an in-

struction that the jury should carefully scrutinize and consider with the utmost caution the testimony of a principal witness whose depravity and admitted low character justified such circumspection. Even without a request, the omission of such instruction has been held error. *Anderson v. U. S.*, 157 F. 2d 429. Nothing in *Caminetti v. U. S.*, 242 U. S. 470, 61 L. Ed. 442, holds otherwise, and there is no such corroboration in the instant case as to derogate from the square applicability of the instruction sought. Once again a situation is presented wherein the Second Circuit disagrees with the Third Circuit, and certiorari is a proper corrective.

8. The Government dismisses as a harmless irregularity the trial judge's bare affirmative answer that the jury might recommend leniency, placing chief reliance on the century-old authority of *State v. Gill*, 14 S. C. 410, while ignoring the host of cited cases to the contrary. No answer is attempted to our argument regarding the inevitable tendency of such an instruction to induce a compromise verdict. The Government also cites *Fillippon v. Albion Vein Slate Co.*, 250 U. S. 76, 63 L. Ed. 76, wherein, however, this Court reversed a conviction because supplementary instructions in writing were improperly transmitted to a jury when the jury should have been recalled, it being further said that erroneous rulings embodied in such instructions are presumptively injurious and furnish ground for reversal unless it affirmatively appears that they were harmless.

9. In answering our last contention, relating to irregularities affecting the composition and deliberations of the jury, the Government (p. 25) refers to "an extensive hearing before the trial judge." Of course, this consisted of nothing more than oral argument despite petitioner's insistence that the matter could not be disposed

of otherwise than through the testimony of witnesses on the sharp issues involved. It is also said that the Circuit Court of Appeals evidently did not construe its own order as contemplating any hearing in which witnesses would be called. This is scarcely an answer, for we are now challenging the correctness of the Circuit Court's ruling. In any event, to the extent to which the Circuit Court acted at all improperly, we submit, in ignoring the important point relating to the juror's concealment of past Government employment—it required the trial judge to act “after hearing and consideration” (795). We are aware of no case wherein mere argument of attorneys has been held to constitute a “hearing.” Without the actual testimony of witnesses and an opportunity to pass on their credibility there is nothing remotely resembling a hearing. The right to adduce evidence has frequently been held to be the essence of a hearing. *Wisconsin Telephone Co. v. Public Service Commission*, 232 Wis. 274, 287 N. W. 122; *State v. Milhollan*, 50 N. D. 184, 195 N. W. 292; *People v. Thompson*, 94 N. Y. 461. It is somewhat unusual for the prosecution to be urging as it does (p. 27) that the trial judge “was fully justified in accepting Lore's second affidavit as the truth.” It is generally a part of the stock in trade of prosecuting officials to denounce recantations as worthless, but evidently, when their own purposes are to be served, the recantations are exalted to the point of highest credibility. Incidentally, the lengthy discussion of this phase of the case in the Government's brief includes no mention of any reported case, from which we hope we may infer that our position as to the law is not challenged. It is particularly noteworthy, wholly apart from the numerous cases condemning the misconduct which we attack, that the Seventh Circuit held in *U. S. v. Sorcey*, 151 F. 2d 899, that a parallel situation necessitated a hearing. The fact that the Second

Circuit; also on this aspect of the case, takes a contrary stand furnishes a complete, independent ground for the issuance of certiorari.

For all of the foregoing reasons, as well as those stated in the petition and main brief, it is respectfully submitted that the application for a writ of certiorari should be granted.

Dated: New York, New York, September 25, 1948.

Respectfully submitted,

JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*

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**Supreme Court of the United States**

October Term 1948.

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No. 143.

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ALVIN KRULEWITCH,

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Petition to Enlarge Scope of Writ of Certiorari to the  
United States Court of Appeals for the Second Circuit.

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JACOB W. FRIEDMAN,  
*Counsel for Petitioner.*



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1948.

ALVIN KRULEWITCH,  
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AGAINST

UNITED STATES OF AMERICA,  
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No. 143.

**Petition to Enlarge Scope of Writ of Certiorari to the  
United States Court of Appeals for the Second Circuit.**

*To the Honorable Chief Justice of the United States and  
the Associate Justices of the Supreme Court of the  
United States:*

Your petitioner, Alvin Krulewitch, respectfully prays for an enlargement of the scope of review under the writ of certiorari granted by this honorable court to the United States Court of Appeals for the Second Circuit, on October 11, 1948.

The writ granted on that date was limited to the third question presented by the original petition, to wit:

“3. It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator after the termination of the alleged conspiracy and not in furtherance thereof.”

That particular point had been decided by the Second Circuit Court of Appeals herein in a manner contrary to the



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holding on a like point by the Fifth Circuit Court of Appeals in *Bryan v. U. S.*, 17 F. 2d 741.

Inasmuch as this Court is about to review the ruling referred to, petitioner desires to call to its attention that there are other important questions in the case, including several probable errors, which may well be determinative of the outcome. These other questions will be briefly indicated, the same numerical designations being retained as in the original petition:

1. The case involves a fundamental question of search and seizure. It had been ruled in petitioner's favor that the Government's agents had conducted an illegal search and had improperly seized petitioner's belongings. Nevertheless, at several points during the trial, when petitioner challenged the source of certain significant evidence as constituting the products of the illegal search and seizure, the trial judge, ignoring the procedure prescribed by *Nardone v. U. S.*, 308 U. S. 338, and other controlling cases, received the evidence on the bald assurance of the prosecutor that the evidence was not derived from the illegal search. It is submitted that there is no previous judicial sanction for the substitution of the Government's *ipse dixit* for the proof patently required. The precedent thus established is novel and dangerous, being fraught with unwholesome possibilities of invasion of substantial rights.

2. It is impossible to justify the refusal by the trial court to compel the Government's principal witness to disclose her residence address at the time of the trial. This ruling effectively barred a vital avenue of cross-examination. That the error was prejudicial and reversible is plainly established in *Alford v. U. S.*, 282 U. S. 687, which the Circuit Court of Appeals did not, it is submitted, effectively distinguish herein.

4. As to the second most important witness for the prosecution, a crucial error was committed in permitting

him to testify regarding his "understanding" to a certain conversation. As was indicated in the brief submitted in support of the original petition, the vast weight of authority declares such proof to be improper, and the state of the record herein is such that it may be fairly argued that on it rests the conviction.

5. Another ruling excluded clearly competent proof of bias and prejudice on the part of the complaining witness. Far from being harmless, as characterized by the Circuit Court of Appeals, it tended to deprive petitioner of additional proof on a subject that is always properly at issue in a criminal case.

6. The instructions to the jury injected into the case a theory of prosecution that had theretofore been entirely absent, and, coupled with an admittedly erroneous definition, served to create confusion where precision was mandatory. The incorrectness of the charge was admitted by the Circuit Court of Appeals (p. 864), but the attempted justification was squarely at variance with the First Circuit holding in *Malaga v. U. S.*, 57 F. 2d 822, and the Fourth Circuit decision in *Van Pelt v. U. S.*, 240 F. 346.

7. The Circuit Court of Appeals herein rejected the rule laid down in the Third Circuit decision in *Speiller v. U. S.*, 31 F. 2d 682, and approved the refusal of the requested charge that the testimony of the complaining witness should be considered by the jury with great caution and subjected to the closest scrutiny. The omission of the admonition was manifestly prejudicial.

8. The trial court advised the jury during their deliberations that they could recommend leniency. The giving of such an instruction without qualification that the recommendation is not binding is error. The Circuit Court of Appeals recognized (p. 866) that "the state court

cases seem to be in conflict as to whether this was erroneous at all. It proceeded to dismiss the contention on the ground that there was no "plain error." The cases sustaining petitioner's position in this regard take a contrary view, and it is submitted that the inherent prejudice of the procedure is such as to call for authoritative review.

9. With respect to the proceedings relating to the misconduct of a juror and the independent misconduct of a bailiff, the denial of a hearing to the petitioner, notwithstanding his substantial showing, was squarely at variance with the ruling in the Seventh Circuit in *U. S. v. Sorcey*, 151 F. 2d 899. Moreover, in one phase it contravened the principles laid down in *Clark v. U. S.*, 289 U. S. 1.

In a case wherein the petitioner's liberty is at stake, the interests of justice would seem to require that the additional errors pointed out above are of sufficient weight and merit to call for a full review.

Petitioner's counsel, whose name is subscribed below, certifies that the present application is made in good faith and not for purposes of delay.

WHEREFORE, your petitioner prays that the Court reconsider the original petition, that the writ of certiorari heretofore granted be enlarged in scope so as to embrace the additional matters above set forth, either in whole or in part, and that petitioner be granted such other and further relief as may seem proper.

Dated: New York City, October 22, 1948.

ALVIN KRULEWITCH,  
Petitioner.

By JACOB W. FRIEDMAN,  
Counsel for Petitioner.

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Petitioner's Brief on Certiorari to the United States  
Court of Appeals for the Second Circuit  
With Appendix Attached.

JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*

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No. 143.

**Petitioner's Brief on Certiorari to the United States Court  
of Appeals for the Second Circuit.**

**Statement.**

On October 11, 1948, this Court granted a writ of certiorari directed to the United States Court of Appeals for the Second Circuit, to review a judgment of that Court entered on May 11, 1948, affirming a judgment of the District Court to the United States for the Southern District of New York, entered therein on April 25, 1947, convicting petitioner of a violation of 18 U. S. Code, Secs. 398, 399 and 88, after trial before Hon. James P. Leamy, District Judge, and a jury (R. 16; numerical references herein, unless otherwise indicated, relate to pages of the transcript of record). In granting certiorari, this Court limited the review to the third question presented by the original petition. That question arose upon petitioner's con-

tention that it was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator made without the knowledge or consent of petitioner after the termination of the alleged conspiracy and not in furtherance thereof. Other matters were presented by the petition, but in view of the limitation of the scope of the appeal they will, of course, not be argued herein.

### **Opinions Below.**

The opinion of the Circuit Court of Appeals herein, which is annexed to the certified transcript of record (857-867), is reported in 167 F. 2d 943. The opinion on a prior appeal in the same case appears in 145 F. 2d 76. No opinion was rendered by the District Court, except the opinion condemning the unlawful search and seizure and granting petitioner's motion to suppress (105-106).

### **Jurisdiction.**

The jurisdiction of the Supreme Court of the United States is invoked under Judicial Code, Sec. 240 (a), as amended, also known as 28 U. S. Code Sec. 347.

### **Statutes Involved.**

The statutes involved are Title 18; Sections 398 and 399, United States Code, and Title 18, Section 88, United States Code. They read as follows:

#### **Title 18, Section 398, U. S. Code**

**Section 398. WHITE-SLAVE TRAFFIC; TRANSPORTATION OF WOMAN OR GIRL FOR IMMORAL PURPOSES; OR PROCURING TICKET.** Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman

or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, c. 395, Section 2, 36 Stat. 825.)

#### Title 18, Section 399—U. S. Code

#### (Re: White Slave Traffic)

399. Same; inducing transportation for immoral purposes.—Any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory

or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose; or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, c. 395, Sec. 3, 36 Stat. 825.)

#### Title 18, Section 88—U. S. Code

88. (CRIMINAL CODE, Section 37.) CONSPIRING TO COMMIT OFFENSE AGAINST UNITED STATES.—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. Section 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, Section 37, 35 Stat. 1096.)

#### Statement of Matters Involved.

The indictment (11-16) charges in three counts that petitioner (who will occasionally be referred to herein as



the defendant), together with one Rose Sookerman, a co-defendant (not tried herein): firstly, persuaded and induced one Elizabeth Mary Johnston to go from New York City to Miami, Florida, on October 20th, 1941, for the purpose of prostitution; secondly, on the same date transported or caused her to be transported from New York City to Miami, Florida, for that purpose; and thirdly, commencing September 15th, 1941, conspired with the co-defendant to commit those offenses. Three overt acts are claimed, occurring October 1st, 15th and 20th, 1941.

Defendant was arrested on December 6, 1941, and was released in bail conditioned upon his appearance to answer the charge in Florida. Upon the adjournment of the United States Grand Jury for the Southern District of Florida in February, 1942, the United States Attorney for that district issued a certificate that there would be no prosecution against defendant, his appearance bond was released and cancelled and the matter was terminated so far as any prosecution in Florida was concerned (80-86).

On January 4th, 1943, defendant was indicted in New York on the same charge (3). The case was tried four times. The first trial was had before Clancy, *D.J.*, and a jury from July 7th, 1943, to July 13th, 1943, and resulted in a disagreement (2). The second trial was had before Porterie, *D.J.*, and a jury from August 25th, 1943, to September 1st, 1943, and resulted in a conviction (2), which, however, was reversed by the Circuit Court of Appeals on August 1st, 1944, with an opinion by Learned Hand, *Circ. J.* (2), reported in 145 F. 2d 76. The third trial was had before Moskowitz, *D.J.*, and a jury on February 18th and 19th, 1946, and resulted in a mistrial (2). The fourth trial, occurring from April 9th to 25th, 1947, resulted in the conviction affirmed in 167 F. 2d 943, with respect to which the present certiorari was granted.

During the last trial the District Court conducted an inquiry on defendant's application to suppress evidence illegally seized. This hearing was held in the absence of

the jury and resulted in the granting of defendant's motion (9, 105-106, 225-227).

The jury made a recommendation of leniency (762) after specific instructions by the Court on that subject (761-762).

Defendant was sentenced to two years' imprisonment, to be followed by two years' probation (767).

Upon the imposition of sentence the District Judge stated that "there are some questions," and forthwith admitted defendant to bail pending appeal (767).

The notice of appeal was duly filed on April 30th, 1947 (10); and supplemental notice of appeal from an order denying motion for request to remand was filed on December 6th, 1947 (11). Judgment of affirmance was rendered on May 11th, 1948, in an opinion by Chase, Circ. J. On or about June 9th, 1948, the Circuit Court of Appeals granted a stay pending the filing of the petition for certiorari, and on the same day Mr. Justice Jackson signed an order extending the time of petitioner to file his petition for certiorari to and including July 10th, 1948 (869). That petition was duly filed, and granted to the extent indicated.

### Statement of the Case.

It does not appear necessary to extend this brief unduly by a protracted review of the facts. The case against defendant rests almost in its entirety on the testimony of Elizabeth Johnston, also variously known as Elizabeth Mary Sorrentino, Joyce Winters, Joyce Winston, Mrs. Curfis and otherwise (47). The substance of her testimony, viewed in the light most favorable to the Government, was tersely outlined in the opinion of the Circuit Court of Appeals on the first appeal (145 F. 2d 76).

All of the testimony given by her, to the extent that it incriminated defendant, was flatly denied by him (585), an individual who has been in a reputable and substantial advertising business for many years (512-518). The Circuit



Court of Appeals in the same opinion made the following comment upon her testimony and credibility:

"She was undoubtedly an unruly and extremely unstable person, she had been wayward from the outset of her career, and had early served a term in a reformatory \* \* \* a hysterical woman, probably never well balanced emotionally, and in any event enervated by a life from girlhood of carousing and debauch \* \* \* her ungoverned moods and caprices \* \* \* *Joyce herself was shown to be to the last degree untrustworthy.*" (Italics ours.)

The purpose of these comments by Learned Hand, Circ. J., was to show that it was error on the trial then being reviewed to withhold from defendant for use on cross-examination a certain signed statement of the witness at variance with her testimony. The Court thus described it:

"Joyce had been questioned at her home by an agent of the Federal Bureau of Investigation on December 8, 1941, thirteen months before the indictment was filed; she signed a written statement of five pages which the agent took away with him, and which completely exculpated the accused, saying that she and Sookerman had gone to Miami of their own choice, to 'work' there on their own account; that the accused had nothing whatever to do with their going, although he had gone down later and had seen them; and that the witness had never had any illicit relations with him."

As to this contradictory statement alone the Court observed:

"\* \* \* We surely cannot say that this circumstantial story so totally at variance with her testimony, might not have created enough doubt to turn the scales in favor of the accused."

If she had already been "shown to be to the last degree untrustworthy", we can fairly urge that this formal declaration, actually used on the last trial, operated well-nigh conclusively to deprive her testimony of any trace of credibility, and that the conviction was necessarily chargeable at least in part to the serious error about to be argued.

That the same witness did not make a better showing on the last trial appears from the following observations in the opinion of Chase, Circ. J. (861):

"It had already been shown that she had been a prostitute since her teens. She had admitted on cross-examination that she was living at the time of the trial in an illicit relationship and had been doing so for about eleven months. She had readily stated that she had previously lied about this very case in a sworn statement to an F.B.I. agent. She had conceded that she had attempted to blackmail the appellant and that she had been arrested upon several occasions and spent time in at least three reformatories."

We reiterate that the conviction sought to be reviewed rests almost exclusively upon the testimony of this unsavory witness.

### **Specification of Error to Be Urged.**

In view of the limitation of the present review, the single point to be argued herein is as follows:

**It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator made without the knowledge or consent of petitioner after the termination of the alleged conspiracy and not in furtherance thereof.**

**ARGUMENT.****POINT I.**

It was prejudicial and reversible error for the trial Court to receive in evidence, over objection, important alleged declarations of a coconspirator made without the knowledge or consent of petitioner after the termination of the alleged conspiracy and not in furtherance thereof.

In order to simplify the references to those portions of the record bearing most directly on the subject matter of the single legal question presented, we have taken the liberty of appending to this brief the several pertinent extracts from the record, including that portion of the opening statement bearing on the evidence, the testimony itself and the paragraph from the opinion of the Circuit Court of Appeals dealing with the point involved.

The indictment specifies September 15th, 1941, as the date of the inception of the conspiracy, and alleges that it was part of the conspiracy that certain acts were to be performed in or about the month of October, 1941 (13-14). Three specific overt acts are alleged, with the dates involved being October 1st, 15th and 20th, 1941 (15). The complaining witness was arrested early in December, 1941 (109), by an agent of the Federal Bureau of Investigation at Canandaigua, N. Y., where on December 8, 1941, she signed a statement exonerating defendant (824). A few days later she was taken from Canandaigua to Rochester, N. Y., for a week (110), where she was visited by her mother and by the codefendant, one Rose Sookerman. At the time of this visit both the defendant and the codefendant were also already under arrest (575).

It is therefore quite evident that any theretofore existing conspiracy was at an end, for defendant and codefendant were certainly not conspiring to entice or transport the complainant after both alleged offenders and the alleged victim had been arrested. It follows that statements

of the codefendant made at this time could in no sense be viewed as being in furtherance of the conspiracy.

It must be remembered that the codefendant was not on trial, so that there was no need to offer her statements as being incriminatory of herself. The Government never offered any proof, nor did it contend, that defendant authorized or even knew of the statements made by her.

The commission of the error now relied upon was foreshadowed in the opening statement of the United States Attorney. Brief as that statement was, this very conversation was detailed at length (34-35), although even at that stage of the proceedings defendant unsuccessfully objected to all references thereto, duly noting an exception.

Finally, when the complaining witness was asked to state a conversation had between her and Miss Sookerman and not in defendant's presence, defendant immediately objected. The Government took the position (110) that the conversation was an act in furtherance of the conspiracy. Defendant, on the other hand, contended (110-111) that the alleged conspiracy ended with the transportation and that the statement was not binding on defendant.

Nevertheless, the trial Court overruled the objection and permitted the complaining witness to give the following testimony (111-112), aggravating the damage by indicating to the jury that the alleged declaration of Miss Sookerman constituted evidence of defendant's intent even though it was not in furtherance of any conspiracy (111).

"She asked me, she says, 'You didn't talk yet?' And I says, 'No.' And she says, 'Well, don't' she says, 'until we get you a lawyer.' And then she says, 'Be very careful what you say.' And I can't put it in exact words. But she said, 'It would be better for us two girls to take the blame than Kay (the defendant) because he couldn't stand it, he couldn't stand to take it.'"

In short, the complaining witness was allowed to state that the codefendant, after the termination of the conspir-



acy, fastened upon defendant a plain imputation of guilt. The Court was promptly apprised that this supposed declaration was a post-arrest matter and ~~not in furtherance~~ of the conspiracy, but proceeded on the theory that a declaration of a coconspirator, whenever made, could be accepted as evidence of intent (111). We have been unable to discover any authority for such a proposition.

We reiterate that the Government offered no proof whatsoever that defendant authorized or had even the slightest knowledge of the statement in question.

In *Fiswick v. United States*, 329 U. S. 211, 91 L. Ed. 196, this Court had under consideration the admissibility of statements made by a coconspirator after the termination of the conspiracy. A conviction of conspiracy to defraud the United States in the exercise of its governmental functions by violating the Alien Restriction Act of 1940 was reversed, solely on the ground that the trial Court erred in receiving against appellants testimony as to statements made by a coconspirator after the termination of the conspiracy. The general rule was thus stated in the opinion of Mr. Justice Douglas:

“While the act of one partner in crime is admissible against the others where it is in furtherance of the criminal undertaking, *Pinkerton v. United States*, 328 U. S. 640, 646, 647, 90 L. Ed. 1489, 1495, 1496, 66 S. Ct. 1180, and cases cited, all such responsibility is at an end when the conspiracy ends. *Logan v. United States*, 144 U. S. 263, 309, 36 L. Ed. 429, 445, 12 S. Ct. 617; *Brown v. United States*, 150 U. S. 93, 98, 37 L. Ed. 1010, 1013, 14 S. Ct. 37. Moreover, confession or admission by one coconspirator after he has been apprehended is not in any sense a furtherance of the criminal enterprise. It is rather a frustration of it. If, as the Circuit Court of Appeals thought, the maintenance of the

plot to deceive the government was the objective of this conspiracy, the admissions made to the officers ended it. So far as each conspirator who confessed was concerned, the plot was then terminated. He thereupon ceased to act in the role of a conspirator. His admissions were therefore not admissible against his erstwhile fellow-conspirators. *Gambino v. United States* (C. C. A. 3d Pa. 108 F. 2d 140, 142, 143.)

In the same opinion the Court adopted the time of the last overt act as the line of demarcation fixing the end of the conspiracy, saying:

"The overt acts averred and proved may thus mark the duration, as well as the scope, of the conspiracy.

\* \* \* \* \*

"If, as we think, the conspiracy charged and proved did not extend beyond the date of the last overt act, the admissions of each petitioner were improperly employed against the others."

While the Circuit Court of Appeals herein cited, *inter alia*, the *Fiswick* decision, it ruled it to be inapplicable— notwithstanding the plain effect of the holding to be that, although the result of a conspiracy may continue, it does not thereby become a continuing conspiracy; that confession after apprehension is not in furtherance of the enterprise but rather a frustration thereof; and that even though it be part of the conspiracy to deceive the Government, admissions made have the effect of ending it and are not admissible against *quondam* fellow-conspirators. The suggestion of the Circuit Court of Appeals that there is implicit in a conspiracy to violate the law an ancillary agreement by the conspirators *inter se* to conceal the vio-



lation tends to introduce into the law on this subject an illogical appendage that may well nullify the basic rule of exclusion. It was in this connection that the Circuit Court of Appeals recognized that the Fifth Circuit had held directly to the contrary in *Brady v. United States*, 17 F. 2d 741.

In the Government's brief in opposition to the petition for certiorari herein, a further attempted distinction of the *Fiswick* case was introduced on the basis that the Sookerman statements were made to the complaining witness herein and not to a government agent; ergo they were calculated to conceal the existence of the conspiracy from the prosecuting authorities. We are aware of no decision predicated upon any such refinement of reasoning. Were this principle to be generally adopted, it would be fraught with possibilities of abuse. The opportunities for evading the general doctrine rendering the declarations inadmissible could be so simply circumvented as to make it completely ineffective.

An examination of the authorities in the various circuit courts shows that for more than 40 years it has been universally held that evidence of the type attacked herein is inadmissible in criminal prosecutions. We shall proceed briefly to examine several illustrative cases.

The Second Circuit itself has quite frequently condemned such proof. Thus, in *Feder v. U. S.* (C. C. A. 2d, 1919) 257 F. 694, Hough, Circ. J., wrote:

"This conspiracy had come to an end, and when that occurred, whether by success or by failure, the admissions of one conspirator by way of narrative of past facts are not admissible in evidence against the others."

Similarly, in the leading case of *Van Riper v. United States* (C. C. A. 2d, 1926) 13 F. 2d 961, L. Hand, Circ. J., wrote:

"Merely narrative declarations are not competent."

Again, in *United States v. Lonardo* (C. C. A. 2d, 1933) 67 F. 2d 883, in reversing a conviction, L. Hand wrote:

"The statements of Hatlen and Gates were admitted against him over his objection; the prosecution's theory being that the concerted purpose of the confederates had not yet been completely fulfilled, and that the declarations of one were admissible against the rest until it was. We need not pause to consider whether in fact the common purpose had ended, because it would make no difference if it had not. Declarations of a confederate made after his arrest will not, except in most unusual cases, be in furtherance of the common plan."

In *United States v. Groves* (C. C. A. 2d, 1941) 122 F. 2d 87, a narrative statement of a coconspirator made after the termination of the conspiracy was held to have been improperly admitted, and necessitated a reversal of the conviction.

Also, in *United States v. Goodman* (C. C. A. 2d, 1942) 129 F. 2d 1009, it was held that the statements of an alleged coconspirator, to be admissible against others than the declarant, must not only be made while the conspiracy is pending, but must also be in furtherance of the object of the conspiracy, and mere narrative declarations are excluded. Swan, Circ. J., wrote:

"Einhorn's statements that Goodman had been his partner in the bankrupt's business were not made to procure goods or money for his corporation. They were merely narrative declarations of a past fact. We are unable to imagine any way in which they could have furthered the objects of a

conspiracy to conceal assets, transfer assets or falsify books. Nor does the Government's brief suggest any or attempt to answer the appellant's argument on this point. \* \* \* We conclude that it was error to admit such statements as against the appellant, and we cannot say that this evidence was non-prejudicial."

The rule is the same in the Third Circuit, where, in *Gambino v. United States* (C. C. A. 3, 1939) 108 F. 2d 140, Maris, Circ. J., wrote, in reversing a conviction:

"It, therefore, follows that assertions made by an accomplice after the termination of the conspiracy come within the prohibition of the hearsay rule and are inadmissible."

This ruling was expressly approved by the Supreme Court in the *Fiswick* case, *supra*.

Likewise, the Fourth Circuit in *Hanger v. United States* (C. C. A. 4, 1909) 173 F. 54, reversed a conviction because the declarations and confessions of an alleged co-conspirator after the offense had been committed and the parties had been arrested were held to be inadmissible against the accused. Boyd, Circ. J., quoted from *Queen v. Hepburn*, 11 U. S. 290, 3 L. Ed. 348, and added:

"So strictly have the courts guarded and applied the rule that hearsay has been held incompetent even in aid of human freedom."

Again in *Dowdy v. United States* (C. C. A. 4, 1931) 46 F. 2d 417, the Court held statements of a codefendant after arrest, not in defendant's presence, inadmissible and reversible error since they were obviously after the termination of the conspiracy and not in furtherance thereof.

The rule is the same in the Fifth Circuit, for in *Hogg v. United States* (C. C. A. 5, 1931) 53 F. 2d 967, Bryan,

Circ. J., ruled that reference by a coconspirator to defendant as his boss, made after the termination of the conspiracy, was inadmissible against defendant, "because at that time the conspiracy had been broken up, and the statement attributed to Johnson was nothing but hearsay."

In *Bryan v. United States* (C. C. A. 5, 1927) 17 F. 2d 741, it was held that the admission of testimony of a witness that on the morning after defendant's arrest she was visited by a third person, and of the conversation between them, which tended to show that the visitor was attempting to conceal evidence against defendant, in the absence of any evidence that defendant authorized or had knowledge of such visit, was prejudicial error. Bryan, Circ. J., wrote:

"The Government seeks to sustain the ruling on the theory that Ison, though not indicted, was a conspirator, and consequently his declarations and conduct were binding on the other conspirators. But there is no evidence that the conspiracy continued beyond the time of the seizure, and it is well settled that the declarations and conduct of a conspirator are binding only upon himself after the conspiracy has been abandoned or broken up."

The Court further held that the testimony was not harmless because merely cumulative; nor could the admission be justified on the theory of an attempt by defendant to conceal evidence of his guilt. The judgment of conviction was reversed on this ground alone. This is the decision which the Circuit Court in the case at bar explicitly recognized as having reached a conclusion diametrically opposed to that which was the result herein.

Another important decision in the same circuit is *Clark v. United States* (C. C. A. 5, 1932) 61 F. 2d 409. There a conviction was reversed, the Court saying:

"As the statements were made by Thomas in August, it is possible that the conspiracy had been abandoned. At any rate, they were merely a narrative of past events. And clearly they were not made by Thomas in furtherance of the conspiracy, and were not made part of the *res gestae* of any overt act. It would be extending the rule to unreasonable limits to permit these statements made by a coconspirator, not on trial, to be admitted. Considering the conflicting evidence before the jury, we cannot say that the testimony, improperly admitted, was harmless. These errors require a reversal of the judgment."

The same Court quoted with approval from Underhill on Criminal Evidence, Section 493:

"But those declarations only are admissible which are made by a conspirator during the existence of the conspiracy and in furtherance of it. The statements of a conspirator, made after the conspiracy has ceased to exist, either by success or failure, and which are merely narrative of past events (though in form a confession, *i. e.*, an admission of the conspiracy) are not receivable against a fellow-conspirator unless the latter was present when they were made and heard them, and expressly or by implication acquiesced in them."

Similarly, in *Seeman v. United States* (C. C. A. 5, 1936) 90 F. 2d 88, Foster, Circ. J., wrote:

"But declarations of a co-conspirator made after the conspiracy has terminated, by success or failure, are not admissible against any other person than himself unless that person was present when they were made."



The same rule was followed in *Nibbelink v. United States* (C. C. A. 6, 1933) 66 F. 2d 178, where a conviction was reversed and Moorman, Circ. J., wrote:

"Before the declarations of coconspirators can be received in evidence against one charged with participating in the conspiracy, it must be shown by independent evidence that the conspiracy existed and that the accused was a party to it at the time the declarations were made."

The rule was likewise applied in the Seventh Circuit in *Collenger v. United States* (C. C. A. 7, 1931) 50 F. 2d 345, where the conviction was reversed, Altschuler, Circ. J., writing:

"It is too plain for discussion that this statement to the Government agent, far from furthering the conspiracy, was made after the conspiracy had ended, and with the purpose of exposing it and penalizing the conspirators, and was hearsay as to all the defendants except Orta \* \* \* Where there are many defendants on trial charged with a general conspiracy, each is subject to the hazard of being injuriously affected by alleged acts or statements of some other defendants, incompetent as to all but the ones making the statements. In such situations courts should be ever alert to minimize, so far as possible, the hazard to defendants whom the law does not bind by such statements."

The rule in the Eighth Circuit has been applied to a variety of situations. Thus, in *Sorenson v. United States* (C. C. A. 8, 1906) 143 F. 820, Sanborn, Circ. J., wrote:

"Where two or more defendants are jointly tried for the same offense, or for a conspiracy to commit



it, the declaration of no one of them, made in the absence of another after the completion of the offense, is competent evidence against the latter."

In *Fain v. United States* (C. C. A. 8, 1913) 209 F. 525, it was held that, while the act of one conspirator in the prosecution of the enterprise was, after proof of the conspiracy, competent evidence against all, his admissions in his narration of past events after the conspiracy had come to an end, whether by success or failure, were inadmissible against his fellows. The evidence was accordingly held incompetent against the appellant, and the judgment of conviction was reversed.

In *Heard v. United States* (C. C. A. 8, 1919) 255 F. 829, in reversing a conviction, Sanborn, Circ. J., wrote:

"While, in cases of conspiracy, the act of one conspirator in the prosecution of the enterprise for the purpose of attaining its object is evidence against all, the act, declaration, or admission of one conspirator by way of narrative of past facts after the conspiracy has come to an end, either by success or failure in attaining its object, is not admissible against the others."

Cf. *Gerson v. United States* (C. C. A. 8, 1928) 25 F. 2d 49, where the same rule was applied to acts committed prior to the formation of the conspiracy.

The rule in the Ninth Circuit is identical, for in *Tofanelli v. United States* (C. C. A. 9, 1938) 28 F. 2d 580, Rudkin, Circ. J., wrote:

"The test whether the statement or declaration of one conspirator is admissible against the others does not depend entirely upon whether the statement was made during the existence of the conspir-

acy. The statement or declaration must not only have been made during the continuance of the conspiracy but it must likewise have been made in furtherance of its object."

A discussion of the authorities is contained in *Mayola v. United States* (C. C. A. 9, 1934) 71 F. 2d 65, where the Court quotes with approval from the earlier holding in the same circuit in *Sugarman v. United States* (C. C. A. 9) 35 F. 2d 663, where it was held:

"The true rule is that acts and declarations of one conspirator, in furtherance of the object of the conspiracy and during its existence, are binding on all members of the conspiracy, whether present or absent."

In the same opinion, the rule of *Kelton v. United States* (C. C. A. 3) 294 F. 491, in the following language, was quoted with approval:

"Before the declarations of coconspirators can be received in evidence against one charged with participating in the conspiracy, it must be shown by independent evidence that the conspiracy existed and that the accused was a party to it at the time the declarations were made."

Finally, there is the Tenth Circuit, where in *Minner v. United States* (C. C. A. 10, 1932) 57 F. 2d 506, Phillips, Circ. J., wrote:

"The acts or declarations of a conspirator prior to the formation of the conspiracy or after its termination are not admissible against his coconspirators."

Likewise, in *Holt v. United States* (C. C. A. 10, 1937), 94 F. 2d 90, in reversing a conviction, Phillips, Circ. J., wrote:

"Alexander was a coconspirator and the acts and declarations of a coconspirator during and in furtherance of the conspiracy are admissible against his coconspirator. But the statement made by Alexander tended to defeat rather than further the conspiracy. It was a narration of past events,—a confession of Alexander who was not on trial, and was clearly inadmissible for any purpose."

It is thus plainly established that wherever the question has arisen, the several Circuit Courts of Appeals have come to the same conclusion, namely, that, in order to render declarations of coconspirators admissible against an alleged conspirator who was on trial, the declarations must fulfill the two requirements that they be made during the pendency of the conspiracy and with a view towards promoting its success. The testimony we challenge herein could not possibly have furthered a conspiracy which had already terminated from two standpoints: firstly, the alleged objects of the conspiracy had already been attained and consummated; secondly, both of the alleged conspirators and the witness testifying to the supposed conversation were already under arrest. We advert again to the Circuit Court of Appeals' intimation that the conspiracy continued for the purpose of concealing the role of petitioner as a conspirator. This is not tenable herein, inasmuch as prior to the alleged statement the witness had already signed a statement completely exculpating petitioner (824), nor is such a rule workable in general, for almost any species of declaration could by distortion of reasoning be viewed as part of a plan to evade detection. We submit that the testimony under attack cannot possibly be jus-

tified logically or reasonably as an act tending to advance the alleged conspiracy, but that on the contrary it was insinuated into the case solely for the purpose of prejudicing petitioner through an indirect, hearsay intimation of his guilt. A conviction thus procured should not be permitted to stand.

## POINT II.

Under the circumstances disclosed, the error complained of is not one that may be ignored.

We anticipate that the Government will argue that the admission of the testimony in question was harmless and therefore not such error as to necessitate a reversal of the judgment. The determination of this aspect of the case entails a study of the matters thoroughly discussed in *Kotteakos v. United States*, 328 U. S. 750, 90 L. Ed. 1557, wherein this Court so completely treated the rationale and applicability of the harmless error rule as to render further analysis on our part presumptuous. The conclusion reached therein is summed up in the following language of Mr. Justice Rutledge:

"But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

Another statement of the applicable law is set forth in *Ah Fook Chang v. United States*, 91 F. 2d 805;

"Finally, if the record shows error, but does not disclose whether the error is prejudicial or whether it is not prejudicial, it is presumed to be prejudicial and to require reversal."

Wholly apart from the foregoing principles, we submit that there are several cogent reasons why the error we urge must be deemed prejudicial. They are briefly as follows:

1. A scrutiny of the entire record discloses that the case against petitioner was a weak one, predicated virtually in its entirety on the impeached and contradictory testimony of a single disreputable witness, who had a compelling motive to inflict injury on petitioner.

2. The case was tried four times, and one of the trials resulted in a disagreement of the jury, a circumstance which is universally recognized as being indicative of a real doubt as to petitioner's guilt.

3. The prosecutor stressed and expressly outlined this particular evidence in his brief opening, which shows that he attached considerable importance to it. We urge the familiar argument that the Government should not be permitted to use and rely strongly on incompetent evidence to procure a conviction and subsequently, when the error is assailed, seek to minimize its significance.

4. The United States Attorney in Florida, with prompt and full knowledge of the events in issue, discontinued all proceedings and declined to prosecute petitioner for this alleged offense or any other.

5. The jury's recommendation of mercy herein after some deliberation is itself a sign that it had grave qualms about rendering any verdict of conviction.



6. The previous conviction herein was reversed by the Circuit Court of Appeals on grounds much less substantial, showing that that Court recognized the case to be eminently one in which the result could be affected by evidence which in a less close litigation could be disregarded.

7. Even on the appeal from the present conviction, the Circuit Court of Appeals, while swift to term another error "a harmless irregularity" (866), did not see fit to dispose of the present point on any such basis.

In short, wholly apart from the general principles referred to in the cases cited above, the instant situation discloses special and persuasive reasons why it cannot be made to turn on a supposition of harmless error. The issues herein were litigated so closely that a far less material deviation from proper procedure could have influenced the outcome. Particularly in view of the almost standard practice of Circuit Courts of Appeals to reverse convictions for this very error alone, we submit that the error herein requires a reversal.

### CONCLUSION.

**The judgment appealed from should be reversed.**

*Respectfully submitted,*

JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*



## APPENDIX.

## Extract From Opening Statement by Mr. Hilly.

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Folio 101

Now, Johnston stayed in her home for a period of three or four days, when she was arrested by a special agent of the Federal Bureau of Investigation. She was transferred to a jail in Rochester, New York, and remained there for a period of about a week. During that time she was visited by her mother and by Sookerman who had returned from Miami, Florida. At that time Sookerman told her that—

Mr. Todarelli: Your Honor, I object to this. It is plainly hearsay, and I do not think it is proper for Mr. Hilly to tell the jury anything about a conversation between Sookerman and this party Johnston.

Folio 102

Mr. Hilly: If your Honor please, I will approach the bench on that question.

The Court: Very well. Please come up.

(Discussion at the bench off the record, not in the hearing of the jury.)

The Court: The jury will understand that anything that is said by counsel in an opening statement is not evidence at all. It is simply counsel's idea of what the evidence will be. You are not to be guided in any way by the opening statement of counsel. You are to be guided only by the evidence itself as it comes in.

Folio 103

Mr. Todarelli: Will your Honor rule on my objection?

The Court: Your objection is overruled.

Mr. Todarelli: I respectfully except.

Mr. Hilly: At this time Sookerman and Johnston had a conversation, this is in Rochester, New York, and at that time Sookerman told Johnston that they should take the blame for the transportation to Miami, Florida, from New York City, that Krulewitch was an old man and that he couldn't do time. Ultimately Johnston was taken to Jacksonville, Florida, and at that time she was bailed out. She did not put up the money for her bail bond, that was put up by Sookerman and Krulewitch.

**Extract From Testimony of E. Sorrentino, for Government,  
Direct.**

Page 109

Folio 327

Q: Now, subsequently were you arrested; after you left New York City were you arrested? A. Yes, I was.

Q: How long after you left New York City were you arrested? A. Well, a couple of days later I think.

Q: Where were you arrested? A. Up at my mother's.

Page 110

Folio 328

Q: Where were you taken? A. Right in my home town.

Q: From your home town were you taken anywhere? A. Yes. To Rochester.

Q: Who arrested you, Mrs. Sorrentino? A. An agent by the name of Frost.

Q: And by an agent you mean an FBI agent; is that correct? A. Yes.

Q: Did you remain in Rochester for any period of time? A. A week.

Q: During that time did you have any visitors? A. Yes.

Folio 329

Q: Who visited you? A. Betty and my mother.

Q. Now at that time, at the time Betty visited you, did you have a conversation with her? A. Yes.

Q. Will you tell us what that conversation was?

Mr. Todarelli: I object to this, your Honor.

The Court: Was the defendant present?

Mr. Hilly: No, he was not.

The Court: Then how is it admissible?

Mr. Hilly: On this ground, if your Honor please. One of the counts in the indictment charges a conspiracy by this defendant here and by the defendant Sookerman who is presently not on trial.

Folio 330

The Court: Is Betty Sookerman?

Mr. Todarelli: Yes, your Honor.

The Court: Betty is Sookerman?

Mr. Todarelli: Yes.

Mr. Hilly: And this is an act in furtherance of the conspiracy, this conversation, and consequently the Government argues that the act of one conspirator binds the other.

Mr. Todarelli: May I suggest this, your Honor, that if the conspiracy is valid it terminated when the act violated in the conspiracy terminated.

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Folio 331

This, therefore, is a conversation that took place after the conspiracy had ended; and anything that was said by Betty is binding only upon Betty and not binding upon the defendant. It is just like a confession, for example, where a man is arrested, he is charged with conspiracy and he confesses to the District Attorney. The courts have uniformly held

that that confession is binding only upon him because the conspiracy had ended.

Folio 332

The Court: Isn't any act or declaration of the defendant or a co-conspirator either before or after the act, evidence of intent?

Mr. Todarelli: No, sir. I don't mean to be impertinent at all, your Honor—

The Court: I have just carefully read Judge O'Connor's charge to the jury in the *Chaplin* case. He so charged, and it was the law.

Mr. Todarelli: This was, after the arrest, your Honor.

Folio 333

The Court: I understand.

Mr. Todarelli: It was not in furtherance of the conspiracy.

The Court: I understand. The objection is overruled. The question may be answered.

Mr. Hilly: Mr. Reporter, would you be good enough to reread the question to the witness, please.

(Record read.)

A. She asked me, she says, "You didn't talk yet?" And I says, "No."

Page 112

Folio 334

And she says, "Well, don't," she says, "until we get you a lawyer." And then she says, "Be very careful what you say." And I can't put it in exact words. But she said, "It would be better for us two girls to take the blame than Kay because he couldn't stand it, he couldn't stand to take it."

Mr. Todarelli: Now, your Honor, I move that that be stricken out on the ground that it is quite apparent that that conversation was not in furtherance of any conspiracy to transport in interstate commerce.

Folio 335

The Court: Motion overruled.

Mr. Todarelli: I have one further request, your Honor. May we have that date approximately fixed?

The Court: If the witness can fix it.

Q. Can you fix the date of that conversation? A. What?

Q. Can you fix the time, Mrs. Sorrentino, of that conversation with Kay—with Betty Sookerman? A. Well, no. I know it was after Pearl Harbor that conversation was.

Q. Did that conversation occur during the week that you were in Rochester, New York? A. Yes.

Page 112

Folio 336

Q. I show you this and ask you if this is your signature? A. Yes.

Q. Pardon? A. Yes.

Q. And I ask you to look at these papers here and I ask you if this is a statement that you made to a special agent of the Federal Bureau of Investigation? A. Yes.

Q. And that statement is dated on December 8, 1941, is that correct, and that is the date you made the statement? A. Yes.

Mr. Hilby: I offer it in evidence.

Mr. Todarelli: No objection.

Page 113

Folio 337

— The Court: It may be received and marked as an exhibit.

(Government's Exhibit 5 for identification received in evidence.)

Mr. Hilly: With your Honor's permission I would like to read this statement to the jury.

The Court: You may.

Mr. Todarelli: Excuse me. May I see Mr. Hilly just a minute?

(Mr. Todarelli conversed with Mr. Hilly off the record.)

Folio 338

Mr. Hilly: I am reading now, ladies and gentlemen of the jury, from Government's Exhibit 5. It is dated December 8, 1941 (reads Government's Exhibit 5 to the jury).

Q. Now this statement, Mrs. Sorrentino, that you gave to Special Agent Frost on December 8, 1941, was that statement correct?

Mr. Todarelli: I object to that, your Honor.

A. No.

The Court: On what ground?

Mr. Todarelli: On the ground that you can't impeach your own witness.

Folio 339

Mr. Hilly: I am not attempting to impeach my own witness, your Honor.



Mr. Todarelli: The question sounds like it to me, was it correct?

The Court: I will permit the question.

Q. Was that statement correct? A. No.

Q. You made that statement after your conversation with Betty? A. No, I didn't; I made it on my own.

Q. You made that statement on your own? A. Yes.

Page 114

Folio 340

Mr. Pinto: I did not get that. That was private between you and the witness.

Mr. Hilly: I did not intend it to be private.

The Witness: I made that statement on my own.

Mr. Pinto: I did not get it. Might we hear it?

Mr. Hilly: Will you read the answer, please, Mr. Reporter, so that Judge Pinto and Mr. Todarelli can hear it.

(Answer read.)

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Folio 578

#### CROSS-EXAMINATION

The Witness: As soon as I was taken in custody I was taken to the Post Office, and Mr. Frost sat down, and I said all this to him, and as soon as it was finished, this was probably maybe an hour later, maybe less than that, I don't know, and I signed it.

Q. You called him Frost. The fact is it is Trost, isn't it, T-r-o-s-t? A. I don't know. I said Frost.

Q. I am not arguing with you about it. He asked you a lot of questions before he started to write these things out; am I right? A. Yes, that is true.

Folio 579

Q. You didn't write this, did you, except to sign it? A. No. I just signed it.

Q. Mr. Trost wrote it out; is that right? A. Yes, sir.

Q. And that was done after he had questioned you for some time? A. Yes.

Q. Where were you arrested, by the way; at your mother's home? A. Yes, I was.

Q. By Mr. Trost himself? A. No. He had another man with him.

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Folio 580

Q. And the two of them took you down to the Post Office? A. Yes.

Q. Is that right? A. Yes.

Q. Now, between the time that they picked you up at your home and the time that you read and signed this statement, had you been in communication with anybody at all? A. No.

Q. All right. You didn't see Mr. Kay, certainly, did you? A. No, did not.

Q. You didn't see any lawyer? A. No.

Q. You didn't see any friend? A. No.

Page 194

Folio 581

Q. When you left to go back to Canandaigua for the holidays you hadn't discussed with Mr. Kay the possibility of your being arrested on this charge, had you? A. When what?

Q. You hadn't talked about being arrested on any charge like this, had you? A. No.

Q. All right. So that when you made this statement, Government's Exhibit 5, you were telling the truth, weren't

you? A. No, I wasn't. I just tried to save him, to save us all.

Folio 582

Q. Well, Kay didn't tell you to put any of the things in here that you put in, did he? A. No, he did not. I just——

Q. Betty hadn't talked with you, had she? A. No.

Q. The fact of the matter is that Betty came up to see you in jail after this was taken, isn't that right? A. Yes, that is right.

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Folio 583

Q. When you said that no threats or promises had been made to you and that you were making this statement of your own free will knowing that it could be used in court against you, that was true, wasn't it? A. What? That I had signed it? Yes, sure, I signed it.

Q. Mr. Trost didn't threaten you, did he? A. No.

Q. He asked you to tell the truth, didn't he? A. Well, yes.

Q. Didn't he insist upon your telling only the truth? A. I know. I am sorry I didn't.

Q. Didn't he? Did he not? A. Yes. Well, naturally, he asked me questions, and that is all. He says, "Do you swear this is the truth?" And I says, "Yes, I do."

### **Extract From Opinion of Circuit Court of Appeals.**

Pages 862-863

"The evidence of the government supported its allegations that the witness just mentioned, Mrs. Sorrentino, was transported from New York to Florida by the appellant and that in so doing he acted in concert with Miss Sookerman, who had been indicted for that conspiracy, and

convicted on the previous trial. It appeared on this trial that Mrs. Sorrentino had been arrested in December, 1941 upon her return from Florida and taken to Rochester, N. Y., where she was visited by Miss Sookerman. The witness was then permitted over the appellant's objection to testify that the co-conspirator, after having asked the witness if she had talked yet and been told that she had not, said to her, "Well, don't until we get you a lawyer." And then continued, "Be very careful what you say," followed by "It would be better for us two girls to take the blame than Kay (the defendant) because he couldn't stand it, he couldn't stand to take it." The objection was that the alleged conspiracy ended with the transportation and that this statement of the co-conspirator, having been made thereafter, consequently was not binding upon this appellant. See *Fiswick v. United States*, 329 U. S. 211, 217, 67 S. Ct. 224, 91 L. Ed. 196; *Galatas v. United States*, 8 Cir., 80 F. 2d 15, 23, 24, certiorari denied, 297 U. S. 711, 56 S. Ct. 574, 80 L. Ed. 998. But while it might conceivably be held that this evidence was admissible to show appellant's intent, we prefer to rest our decision on another ground. We think that implicit in a conspiracy to violate the law is an agreement among the conspirators to conceal the violation after as well as before the illegal plan is consummated. Thus the conspiracy continues, at least for purposes of concealment, even after its primary aims have been accomplished. The statements of the co-conspirator here were made in an effort to protect the appellant by concealing his role in the conspiracy. Consequently, they fell within the implied agreement to conceal and were admissible as evidence against the appellant. Cf. *United States v. Goldstein*, 2 Cir., 135 F. 2d 359; *Murray v. United States*, 7 Cir., 10 F. 2d 409, certiorari denied, 271 U. S. 673, 46 S. Ct. 486, 70 L. Ed. 1144. While *Bryan v. United States*, 5 Cir., 17 F. 2d 741, is by implication directly to the contrary, we decline to follow it."



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No. 143

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# In the Supreme Court of the United States

OCTOBER TERM, 1948

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ALVIN KRULEWITCH, PETITIONER

U.  
UNITED STATES OF AMERICA

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## OPINION BELOW

The opinion of the Circuit Court of Appeals  
(R. 857-867) is reported at 167 F. 2d 943.

## JURISDICTION

The judgment of the Circuit Court of Appeals  
was entered May 11, 1948 (R. 868). On June 9,  
1948, by order of Mr. Justice Jackson, the time for  
filing a petition for a writ of certiorari was ex-

tended to July 10, 1948 (R. 869). The petition for a writ of certiorari was filed July 9, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45(a), F. R. Crim. P.

#### QUESTIONS PRESENTED

1. Whether the trial court erred in admitting evidence which allegedly resulted from leads obtained in an illegal search on the prosecutor's assurance that the evidence was procured independently of the search.

2. Whether, in the circumstances of this case, it was prejudicial error for the trial court not to require the prosecution's chief witness, the woman alleged to have been transported for immoral purposes, to disclose on cross-examination where she was living at the time of the trial.

3. Whether statements of a codefendant not on trial, made subsequent to the interstate journey alleged in the indictment, but designed to conceal petitioner's complicity in the conspiracy charged, were properly admitted in evidence against him as declarations of a co-conspirator in furtherance of the conspiracy.

4. Whether a government witness was properly permitted to testify concerning his "understanding" based on petitioner's actual words, which the witness could not recall *verbatim*.

5. Whether it was error to exclude testimony that petitioner once reported to the police an unsuccessful attempt at extortion on the part of the chief prosecution witness, where she had already admitted the extortion attempt.

6. Whether the trial court erred in permitting the jury to convict if they found the transportation in issue to have been for the purpose of debauchery or other immoral purposes as well as commercial prostitution.

7. Whether it was error to refuse to instruct the jury that the testimony of the woman alleged to have been transported for immoral purposes should be considered with great caution and closely scrutinized.

8. Whether the trial judge erred in answering with a simple affirmative an inquiry by the jury as to whether they might recommend leniency.

9. Whether petitioner's motion for a remand of the cause, then pending on appeal, for the purpose of enabling the trial court to pass on a motion for a new trial on the ground of alleged newly discovered evidence was properly disposed of.

#### STATEMENT

Count 1 of a three-count indictment (R. 11-16), filed January 4, 1943 (R. 3), in the District Court for the Southern District of New York, charged that on or about October 20, 1941, petitioner and

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one Rose Sookerman,<sup>1</sup> a codefendant, induced and enticed one Elizabeth Johnston<sup>2</sup> to travel in interstate commerce from New York City to Miami, Florida, for the purpose of prostitution and debauchery and for other immoral purposes, in violation of Section 3 of the Mann Act (18 U.S.C. 399). Count 2 charged the same defendants with causing the aforesaid transportation, in violation of Section 2 of the Mann Act (18 U.S.C. 398). The third count charged conspiracy to commit the substantive offenses. Following a trial by jury, petitioner was found guilty on all counts (R. 762).<sup>3</sup> He was sentenced to imprisonment for two years on the first count, and on the other two counts the imposition of sentence was suspended and he was placed on probation for two years to take effect at the expiration of the sentence on count 1 (R. 767). On appeal the judgment of conviction was affirmed (R. 868).

<sup>1</sup> Various referred to in the record as Pauline Hillson, Betty Lewis, Betty Gordon (R. 49), and Mrs. Rose Kay (R. 715).

<sup>2</sup> Various referred to in the record as Elizabeth Sorrentino, Joyce Winters, and Joyce Winston (R. 47).

<sup>3</sup> This was the fourth time that petitioner had been brought to trial. His first trial, at which his codefendant was jointly prosecuted, resulted in a disagreement of the jury (R. 2). In his second trial, he and his codefendant were found guilty by a jury on all counts, and he received prison sentences aggregating 3 years and six months on counts 1 and 3 and a suspended sentence on count 2, but on appeal by petitioner alone his conviction was reversed by a divided court and a new trial granted, because of trial errors (R. 2; see *United States v. Krulwich*, 145 F. 2d 76). His third trial ended in a mistrial (R. 2).



Since petitioner does not question the sufficiency of the evidence to support the verdict, it will suffice to summarize it very briefly. Petitioner met Elizabeth Johnston, whom he knew to be a prostitute (R. 324), in June of 1939 (R. 51), promptly placed her in a brothel in New York City with the codefendant Sookerman, and thereafter took her earnings (R. 51-52). After a week or so, he attempted to place her in a brothel in Chicago (R. 51, 52, 54, 56), but she was unwilling to remain there and both returned to New York City, where she continued to "work" for him (R. 54-64). In addition to working as a prostitute for him, she frequently lived with him as his mistress (R. 163-166). In October of 1941, he determined to have her ply her trade in Florida and rented the El Chico Hotel in Miami for the proposed brothel (R. 72, 237; Gov. Ex. 7, R. 207, 826). On October 21, 1941, in company with Sookerman, they left New York City for Miami by train (R. 72-74; Gov. Ex. 17, R. 366, 830). Shortly after their arrival, Johnston commenced to engage in prostitution (R. 76) and turned her earnings over to petitioner (R. 77-78).

#### ARGUMENT

1. At the trial, after a hearing held in the absence of the jury, the court suppressed all evidence which had been obtained as a result of a search of petitioner's residence (R. 224-225). From time to time thereafter petitioner objected to the reception of certain items of the Government's evidence on

the ground that they were not obtained independently of the illegal search (R. 226, 340, 391). On the prosecutor's assurance in each instance that the challenged evidence had been independently obtained, the court permitted the evidence to be received (R. 227, 341-342, 391-393). Petitioner contends that this was error and that each time the defense challenged an item of evidence on the ground that the Government's possession of it resulted from the illegal search the court was bound to interrupt the trial for the purpose of holding a hearing on the issue (Pet. 17-21). The contention is, we submit, without merit.

In *Nardone v. United States*, 308 U. S. 338, 341, this Court stated that once a defendant has established that evidence has been illegally procured, "the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree. This leaves ample opportunity to the Government to convince the trial court that its proof had an independent origin." The Court, however, also pointed out that, because of the necessity of expedition in criminal trials, "tenuous claims" were not sufficient to "justify the trial court's indulgence of inquiry into the legitimacy" of the challenged evidence, and that "claims that taint attaches to any portion of the Government's case must satisfy the trial court with their solidity." *Id.*, at pp. 341-342. "The civilized conduct of criminal trials," the Court continued, "nec-

essarily demands the authority of limited direction entrusted to the judge presiding in federal trials, including a well-established range of judicial discretion, subject to appropriate review on appeal, in ruling upon preliminary questions of fact. Such a system as ours must, within the limits here indicated, rely on the learning, good sense, fairness and courage of federal trial judges." *Id.*, at p. 342.

In the case at bar petitioner's first objection to allegedly tainted evidence set the pattern for the procedure which was followed and which apparently was wholly satisfactory to him then. He merely stated his belief that proposed evidence was a "fruit of [the] illegal search." The prosecutor, in reply, advised the court that the proposed evidence had been independently obtained. The court then asked the prosecutor whether he wished "to assure me that the evidence which you are about to introduce is not the fruit of the illegal search." The prosecutor answered in the affirmative, and, following an off-the-record discussion, proceeded to explain the independent origin of the evidence. He was interrupted, however, by the judge, who said, "Well, it is not necessary to argue the matter \* \* \* any longer. On your assurance that the testimony which you are about to introduce is not the fruit of the illegal search, I will receive the evidence." (R. 226-227.) Petitioner registered no further objection to the reception of the evidence in question. He thus accepted the prosecutor's as-

insurance and did not demand sworn proof of the independent origin of the evidence.

With the pattern thus set, the court handled a second objection of the same character in the same way, petitioner again registering no objection after his initial suggestion that the proposed evidence was tainted (R. 340-342). A third objection of like character was similarly disposed of (R. 391-393).<sup>4</sup>

It is obvious, we think, that in each instance petitioner's initial suggestion that the proposed evidence was a "fruit of the poisonous tree" and not independently obtained by the Government was entirely speculative. Under the rule of the *Nardone* case, *supra*, therefore, the trial judge appro-

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<sup>4</sup> Petitioner misleadingly intimates that the prosecutor was unable to produce proof, after an offer to do so, that the evidence involved in this third objection was independently procured (Pet. 18-19). The pertinent facts are as follows: The challenged evidence was the testimony of one Levenson, a Baltimore furniture dealer, that on October 21, 1941, petitioner called on him in Baltimore and "said that he wanted to buy some furniture for some hotel in Florida," which furniture he proceeded to buy (R. 394). When this witness was called, petitioner objected that the identity and testimony of this witness were based on information contained in papers found in the illegal search (R. 391). The prosecutor assured the court, however, that the Government's lead in respect of this witness was obtained from interrogation of the codefendant Rose Sookerman, and not from papers taken in the search (R. 391-392). Though the court accepted this assurance (R. 391-392), petitioner nevertheless stated that he thought the prosecutor should be compelled to produce the Sookerman statement in question (R. 393). The prosecutor then stated that while he did not have Sookerman's "original statement," he did have "the statement as set forth in an FBI arrest report" (R. 393). Though the judge said it would not be necessary for him to produce the FBI report mentioned (R. 395), the prosecutor subsequently did produce it, and offered to read it into the record (R. 410-411).

propriately exercised his discretion in admitting the evidence after receiving the prosecutor's assurance that the evidence had an independent origin.

2. Elizabeth Johnston (or Elizabeth Sorrentino, her married name, by which she was most often referred to in this, petitioner's fourth trial), the woman petitioner was accused of illegally transporting, was the Government's chief witness. The first question asked her on cross-examination was where she was then living. She replied that she did not "care to disclose that," and a direct answer was not then demanded by petitioner's counsel. She admitted, however, in response to further questioning, that she was not living with her husband, Mr. Sorrentino, and that she was then, and had been for the preceding eleven months, living with "some man." (R. 121-122.) Considerably later in the trial, after she had been excused to permit other witnesses to testify and then been recalled and cross-examined at some length, the following occurred (R. 307-308):

Q. Where do you live now, Mrs. Sorrentino?

Mr. Hilly: Objected to, if your Honor please.

A. I wouldn't say because he would be up there bothering me.

The Court: That question was asked the other day and she said she would prefer not to state it.



Mr. Hilly: If Mr. Todarelli wants the address I will give it to him, but I am not going to put it on the record. I do not think it is material on the record, if your Honor pleases.

Mr. Todarelli: I think we are entitled to know that, your Honor.

The Court: In my discretion I will exclude the question.

The Witness: Thank you.

Mr. Todarelli: Very well, sir. \* \* \*

Petitioner contends, relying on *Alford v. United States*, 282 U. S. 687, that the court's ruling, permitting the witness to decline to state her address, was prejudicial error because he was thereby prevented from disclosing to the jury her environmental background for impeachment purposes (Pet. 22-24). We submit that the *Alford* case is clearly distinguishable from the case at bar, and that the court's ruling was an appropriate exercise of discretion.

In the *Alford* case, a mail-fraud prosecution, a former employee of the defendant, testifying for the Government, gave damaging testimony against the defendant on direct examination. On cross-examination, questions seeking to elicit the witness's place of residence were excluded on the Government's objection that they were immaterial and not proper cross-examination. Counsel for the defense insisted that the questions were proper cross-examination and that the jury were entitled to know "who the witness is, where he lives and what his

business is." Later, the jury having been excused, defense counsel urged, as an additional ground for asking the excluded questions, that he had been informed that the witness was then in the custody of the Federal authorities, and that such fact might be brought out on cross-examination "for the purpose of showing whatever bias or prejudice he may have." The court, however, adhered to its previous rulings. This Court held the exclusion of the attempted line of inquiry to be, under the circumstances, prejudicial error, because it prevented the defendant from "identifying the witness with his environment, to which cross-examination may always be directed" (282 U. S., at p. 693), and because it invaded the defendant's right to seek to discredit the witness against him.

The present case is entirely different from the *Alford* case. As pointed out by the Circuit Court of Appeals (R. 861), "the witness's environment had already been brought out on direct, as well as cross-examination. It had already been shown that she had been a prostitute since her teens [see R. 47-48, 132, 135]. She had admitted on cross-examination that she was living at the time of the trial in an illicit relationship and had been doing so for about eleven months [see R. 121-122]. She had readily stated that she had previously lied about this very case in a sworn statement to an F.B.I. agent [see R. 195]. She had conceded that she had attempted to blackmail the appellant [see R. 283-285] and that she had been arrested upon several

occasions and spent time in at least three reformatories [see R. 47, 134, 288]. Under these circumstances, it can hardly be said here, as it was in the *Alford case* [282 U. S., at p. 694] that 'The trial court cut off *in limine* all inquiry on a subject with respect to which the defense was entitled to a reasonable crossexamination'."

In view of the fact that the Johnston woman's character, her capacity for lying under oath, and her hostility to petitioner had all been brought to the jury's attention, petitioner clearly suffered no prejudice in not being permitted to elicit the precise address at which she was then living or the name of the other party to her latest illicit liaison. And the ready acquiescence of petitioner's trial counsel in the judge's ruling, as evidenced by the above-quoted excerpt from the record (*supra*, pp. 9-10), is indicative of the fact that he did not consider the ruling prejudicial.

Moreover, as the Circuit Court of Appeals further observed (R. 861-862), "the witness [Johnston] was the same one characterized in our former opinion [*United States v. Krulewitch*, 145 F. 2d 76, 78], as 'an unruly and extremely unstable person' and her actions at this trial disclosed by the record show as before that the judge 'was faced with a hysterical woman, probably never well balanced emotionally, and in any event enervated by a life from girlhood of carousing and debauch.' And the court had the duty to protect her, as the *Alford case* states [282 U. S. at p. 694], 'from questions

which go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate her. It could well have been thought that, if she were forced to disclose in open court the name of the man with whom she was living and their address, it was likely that she would thereby become even less controllable and thus would make it even more difficult to arrive at the truth. When the information sought from her was offered the defense, we think it became a matter of discretion whether she should be forced to supply it, and that discretion we believe to have been exercised wisely under the circumstances."

3. The Johnston woman testified that early in December 1941 she left Miami and returned to New York, where she was arrested in connection with this case; that following her arrest she was taken to Rochester, New York, where she stayed a week; and that during this period Rose Sookerman, petitioner's codefendant, came to her and advised her not to "talk" until she had consulted a lawyer, adding that "It would be better for us two girls to take the blame than Kay [an alias of petitioner] because he couldn't stand it, he couldn't stand to take it" (R. 109-112). The witness's testimony of these statements of Rose Sookerman was objected to by petitioner on the ground that the conspiracy to transport charged in the third count had ended the "minute that that transportation was at an end," so that the rule that acts and declarations of one

conspirator in furtherance of the conspiracy are admissible against co-conspirators had no application (R. 110-111). Petitioner contends that the trial judge's overruling of his objection was erroneous. (Pet. 24-26).

Petitioner's assumption that the conspiracy charged terminated immediately upon completion of the interstate transportation which was the alleged object of the conspiracy is, we submit, unrealistic. Cf. *Lew Moy v. United States*, 237 Fed. 50, 52 (C.C.A. 8). Implicit in a conspiracy to violate the law, as the Circuit Court of Appeals pointed out (R. 862-863), "is an agreement among the conspirators to conceal the violation after as well as before the illegal plan is consummated. Thus the conspiracy continues at least for purposes of concealment, even after its primary aims have been accomplished." Sookerman's statements to Johnston which petitioner objected to were clearly designed to conceal petitioner's participation in the conspiracy. They were admissible against him, therefore, under the familiar rule of evidence in conspiracy cases above referred to. *United States v. Goldstein*, 135 F. 2d 359, 361 (C.C.A. 2); cf. *Murray v. United States*, 10 F. 2d 409, 411 (C.C.A. 7), certiorari denied, 271 U. S. 673.<sup>5</sup>

<sup>5</sup> In *Fiswick v. United States*, 329 U. S. 211, relied on by petitioner (Pet. 25), the trial court had admitted as against all of several alleged co-conspirators certain damaging admissions made by each to agents of the Federal Bureau of Investigation following their apprehension. This was held error, the Court observing that "confession or admission by one co-conspirator



4. Arthur Peacock, a government witness, who ran a bicycle shop on the ground floor of the building in which the El Chico Hotel was located, testified that petitioner inquired of him, some time before the transportation charged in the indictment, if he could "lease the upstairs." Peacock told petitioner that he had nothing to do with the "upstairs" and advised petitioner where the owner of the building could be found. (R. 235-236.) Asked if he had any further conversation with petitioner, the witness replied that he tried to "find out what was going on upstairs," and asked petitioner some questions. Asked if petitioner "made answers to those questions," the witness testified that "He made some sort of an answer; it has been so long ago that I can't remember exactly what it was. Seemingly there was something said that he led me to believe that they weren't going to sell merchandise or something upstairs, they were going to operate." The witness was then asked whether, as a result of his talk with petitioner, he had "any understanding as to what the place was going to be used as." Objection was made on the ground that the answer called for a "conclusion" of the witness, but the answer was allowed and was, "In accordance with my belief at that time the gentleman led me to be-

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after he has been apprehended is not in any sense a furtherance of the criminal enterprise. It is rather a frustration of it" (329 U. S. at p. 217). The distinction between this case and the *Fiswick* case, therefore, is clear, since the Sookerman statements to Johnston, far from being admissions to a government agent, were plainly calculated to conceal the existence of the conspiracy from the prosecuting authorities.

lieve that there was going to be the same as had been operated there sometime before a house of prostitution." (R. 237.) A motion for mistrial was at once made and the court, before ruling upon it, asked the witness whether the understanding he had just stated was the result of something petitioner had said to him. The witness answered that it was and added that if he had "been asked that same question in the first trial, \* \* \* I would have very likely been able to answer it," but that he could not then recall petitioner's "exact words." (R. 238-239.) The motion for a mistrial was then denied (R. 239). Petitioner contends that this ruling was erroneous (Pet. 26-30).

We submit that the court's ruling was plainly correct. It is clear from the above account that the witness was not merely stating a general impression gained from a conversation but not based on specific language used. Rather, he was testifying to the substance of what petitioner had said to him, passage of time having dimmed his memory as to the "exact words" petitioner had used. This, of course, is a common and obviously legitimate manner of reproducing a conversation. As the Circuit Court of Appeals correctly observed (R. 864), "Here the witness, as commonly occurs, was trying in vain to reproduce the identical language used in a conversation he had had so long before that his memory was unequal to the task. \* \* \* He \* \* \* was permitted to give his understanding of what was said to him—in effect the substance of

what was said. The evidence was the best that the circumstances permitted and was properly put before the jury for whatever it was worth."

5. Petitioner offered to prove, through a police officer, that he once complained to the police that Elizabeth Johnston had tried to extort money from him after she had returned to New York from Florida and they had become estranged (R. 504-505). Petitioner's counsel stated that the purpose of the testimony was to "show that when the defendant refused to give her the money her mind became inflamed and embittered, and it is on the question of her bias and prejudice and motive for testifying falsely in this case" (R. 505). On objection of the Government, the trial court excluded the testimony (R. 505). Petitioner contends that the ruling was error (Pet. 30-31). Johnston, however, had already freely admitted her attempt to extort money from petitioner and his refusal to comply with her demand (R. 284-285). The exclusion of the police officer's testimony was proper, therefore, since it could only have confirmed what Johnston herself admitted. Petitioner now suggests, however, that the officer's testimony would not only have confirmed the unsuccessful blackmail attempt, but would also have shown an additional ground of bias against petitioner on Johnston's part, *viz.*, her resentment at his reporting the incident to the police (Pet. 31). The argument does not avail petitioner, however, since there was no

proof or offer of proof that Johnston ever heard of petitioner's reporting the matter.

6. The trial court repeatedly instructed the jury, in the language of the indictment and the statute, that in order to convict, they would have to find that the transportation in issue was "for the purpose of prostitution, debauchery, or other immoral purposes" (R. 748 *et seq.*). Petitioner contends that the jury should have been instructed that they could not convict unless they found the purpose of the transportation to have been commercial prostitution (Pet. 31-35). The contention is plainly without merit, since transportation for the purpose of non-commercial immorality is as much forbidden by the Mann Act as transportation for prostitution purposes, *Caminetti v. United States*, 242 U. S. 470, and, as pointed out by the Circuit Court of Appeals (R. 865), there was ample evidence from which the jury might have found that the transportation in issue had the dual purpose of commercial prostitution and concubinage. Indeed, petitioner admits that "The record is replete with evidence, and \* \* \* it is undisputed that there was an illicit relationship between defendant and the complaining witness \* \* \*" (Pet. 33).

True, the court, at one point in its charge, inadvertently defined prostitution too broadly as "the practice of sexual intercourse between a man and a woman outside of the marital relationship" (R. 748), and petitioner now complains of the faulty definition (Pet. 32).

But, as observed by the court below (R. 865), petitioner's objection to the charge "was not based upon any faulty definition of terms, which would doubtless have been corrected had it been called to the court's attention \* \* \*." Rather, his objection was aimed at the whole theory that he could be convicted if his purpose in transporting the woman involved was found to be merely for purposes of personal immorality (R. 760-761), and this, as we have shown, was not well taken.

7. Petitioner contends that the trial court erred in refusing to give four requested instructions to the effect that the testimony of the Johnston woman must be considered by them with caution and closely scrutinized and that "unless the jury are convinced beyond a reasonable doubt of the truth of her testimony, the defendant should be acquitted" (Pet. 35-38). It is evident that the requested instructions (Nos. 15-18, R. 740-741) would have made the question of petitioner's guilt depend solely on whether or not the jury believed this witness. Her credibility, however, was not the sole issue in the case, as petitioner contends (Pet. 38), for her testimony was corroborated in every important particular. Petitioner admitted sending her to the El Chico Hotel in Florida on October 21, 1941 (R. 550, 553). Her crucial testimony as to the purpose of the trip (R. 72) was corroborated by independent testimony that on a previous visit to Miami petitioner had rented the El Chico for use as a



brothel (R. 236-237) and by documentary evidence showing that petitioner had sought to conceal his connection with the enterprise by renting the hotel in another's name (Gov. Ex. 7, R. 207, 826). Her testimony that the establishment was used for the purpose of prostitution was likewise corroborated (R. 239-240, 266). And her important testimony that she had previously fabricated evidence at petitioner's request (R. 118-121) was corroborated by proof that another witness had similarly fabricated evidence at his request (R. 343-345).

The fact that Johnston's testimony was fully corroborated in all material respects distinguishes *Speiller v. United States*, 31 F. 2d 682, 683 (C.C.A. 3), holding that it was error not to instruct the jury that they should carefully scrutinize and consider with greatest caution the testimony of the woman allegedly transported in a Mann Act case, she being the sole Government's witness and a woman "without morals" and showing "a reckless disregard of the truth." And in *Caminetti v. United States*, 242 U. S. 470, 495, it was held not reversible error to refuse an instruction that "the testimony of the two girls was that of accomplices, and to be received with great caution and believed only when corroborated by other testimony adduced in the case."<sup>6</sup>

<sup>6</sup> The trial judge in the instant case did, of course, give the usual charge that the credibility of witnesses and the weight to be given their testimony were matters entirely for their determination, including the instruction that, in weighing testi-

8. After the jury had retired to consider their verdict, they sent a note to the judge asking if they might recommend leniency. The judge read the note to counsel and stated that he intended to answer it "yes." Later, the jury returned a verdict of guilty with a recommendation of leniency. (R. 761-762.) Though no objection was made at the time of the incident, nor, indeed, thereafter, prior to appeal, petitioner contends that the judge's communication with the jury without recalling them to the courtroom and his answering their question with a bare affirmative without explaining that he would not be bound by any recommendation was such plain and prejudicial error that reversal of the conviction is justified notwithstanding the failure to object (see Rule 52(b), F. R. Crim. P.) (Pet. 39-41).

The contention is clearly without merit. This informal way of replying to the jury's question was at most a harmless irregularity. *Dodge v. United States*, 258 Fed. 300, 305 (C.C.A. 2), certiorari denied, 250 U. S. 660. Since defense counsel was present when the incident occurred and had ample opportunity to object to the giving of the

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mony, they could consider "the appearance of the witnesses on the stand, their candor or lack of candor, their feelings or bias, if any, their interest in the result of the trial, if any, and also their opportunity for observation, their means of information, and the reasonableness of the stories which they tell" (R. 745). As observed by the court below (R. 866), "this jury had ample warning that the witness [Johnston] was ill disposed toward the appellant and there was no reversible error in failing to add to the usual instructions as to credibility special ones in the requested language."

instruction, petitioner is in no position to complain now either of the nature of the instruction or the manner of its delivery. *Fillippon v. Albion Vein Slate Co.*, 250 U. S. 76, 81. See also *State v. Gill*, 14 S. C. 410, 414-416, a capital case, in which the jury asked the identical question asked here and were answered, as here, by a bare affirmative. Since the jury were plainly told in the main charge that petitioner's sentence, if he was found guilty, was the concern of the court, not theirs (R. 760), it is not to be presumed that they might have thought their recommendation would bind the court, or, as petitioner suggests (Pet. 40-41), that the verdict reached was the result of a compromise.<sup>7</sup>

9. Petitioner's last contention (Pet. 41-48) necessitates a somewhat detailed statement of the circumstances on which it is based:

The verdict of guilty was returned on April 25, 1947, and notice of appeal was filed on April 30, 1947 (R. 10). On or about August 26, 1947, pending the appeal, petitioner filed in the Circuit Court of Appeals a motion to remand the cause to the trial court in order that the trial court might pass on a motion for a new trial on the ground of newly

<sup>7</sup> It may be noted, *passim*, that the fact that petitioner was sentenced in the instant trial to but two years' imprisonment, whereas he received a sentence of three years and six months following his initial conviction without recommendation, which was reversed on appeal (see p. 4, *supra*, and in fn. 3), indicates that the court gave considerable weight to the jury's recommendation of leniency. (see R. 765).

discovered evidence (R. 768-775).<sup>8</sup> The alleged grounds on which the motion for a new trial were based were (1) that Kathryn Swift, the forelady of the jury, fraudulently concealed at the *voir dire* examination that she had been an employee of the Government, and (2) that Joseph Lore, a bailiff in charge of the jury, neglected to report to the trial court a request received from the jury during their deliberations that they receive further instructions, and undertook to answer their query himself (R. 769-770, 772-775). Attached to the motion was an affidavit of Lore stating that during the course of the jury's deliberations the jury informed him that they desired further instructions from the court "as to bringing in a divided verdict"; that he told them that "they must bring in a unanimous verdict one way or the other"; and that he did not report the request to the court (R. 776).

The Government filed a memorandum in opposition to the motion (R. 777-782), to which were attached (1) a subsequently executed affidavit of Lore in which he entirely repudiated the statements made in his earlier affidavit, explaining that he had perjured himself in the earlier affidavit at petitioner's request and on the latter's promise to

<sup>8</sup> According to the motion, "A similar motion for this relief was made on or about July 7, 1947, and heard on August 5, 1947, by District Judge Porterie, who denied the relief solely on the ground that 'Since there is an appeal pending in the Circuit Court of Appeals, the Court is without jurisdiction'" (R. 775).

"take care" of him (R. 783-786); (2) an affidavit of the forelady of the jury, stating that she definitely recalled that she was never asked on *voir dire* whether she had ever worked for the Government, that if she had been asked that question she would have had no hesitation about disclosing the fact that she had been a government employee in the past, and that the contents of the bailiff's (first) affidavit were entirely untrue (R. 787-789); (3) a letter from the trial judge to the United States Attorney, stating that he had "no recollection at all that Mrs. Swift \* \* \* was asked whether or not she had ever been employed by the United States Government," and that "Mrs. Swift struck me as being a highly competent and honorable person, and I am sure that if she was asked whether or not she had ever been employed by the Government, she would have answered truthfully" (R. 792); and (4) an affidavit of a deputy clerk of court, stating that to the best of his recollection Mrs. Swift was not asked any questions regarding past employment by the Government (R. 793-794).

On October 10, 1947, the Circuit Court of Appeals disposed of the motion for remand as follows: "Motion denied, but if Leamy, J. [the trial judge], after bearing and consideration sees fit to request that the cause be remanded to him, such a request will be granted. However, this applies only to the point of the supposed communication of the bailiff with the jury" (R. 795).



Thereafter, following an extensive hearing before the trial judge (R. 800-821), at which counsel for petitioner and for the Government were heard; but at which no witnesses were called, the trial judge entered an order that "no request for remand be made herein" (R. 822-823).

Petitioner contends that the Circuit Court of Appeals erred in limiting Judge Leamy to a consideration of the alleged unlawful communication between the bailiff and the jury in determining whether or not to ask for a remand of the cause, and, further, that Judge Leamy erred in not calling for a full-dress hearing, at which the testimony of witnesses could be adduced, in deciding whether or not to ask for a remand in respect of that limited issue (Pet. 41-48). Pretermittting the question of whether the motion for a new trial, for the determination of which remand was sought, presented "newly discovered evidence" within the meaning of Rule 33, F. R. Crim. P., requiring that a motion for a new trial on any ground other than newly discovered evidence be made within five days after verdict, we submit that petitioner's contentions are clearly lacking in merit.

(a) Assuming, *arguendo*, that concealment by a juror on *voir dire* examination of his or her past Federal employment would justify or require the granting of a new trial, the Circuit Court of Appeals was clearly within the bounds of sound discretion in excluding this aspect of petitioner's alle-

gations from consideration by Judge Leamy. For as against petitioner's unsupported claim that the forelady of the jury had concealed her past employment as alleged, were the categorical denial of the juror in question that she was ever questioned on *voir dire* as to her employment by the Government and her avowal that she would have had no motive whatever in concealing such employment if she had been asked about it. Her statements were corroborated, moreover, by the statement of the trial judge and the affidavit of the deputy clerk of court to which we have referred. Furthermore, petitioner pointed to nothing which would suggest a motive for the alleged concealment. Under the circumstances, therefore, the Circuit Court of Appeals was entirely justified in finding the allegation too tenuous and improbable to warrant its further consideration, with the resultant delay in an already unduly protracted prosecution (see fn. 3 *supra*, p. 4) which such further consideration would entail.

(b) As to the claim that it was incumbent upon Judge Leamy, under the terms of the circuit court of appeals' order of October 10, 1947, to hold a full hearing in respect of the alleged communication between the bailiff and jury, including the adduction of testimony, in determining whether to request a remand of the cause for the purpose of disposing of the motion for a new trial on that ground, it may be pointed out, in the first place,

that the circuit court of appeals, which issued the order, did not so construe it, as evidenced by its approval of Judge Leamy's refusal to order such a hearing (R. 867). Further, it is clear from the terms of the circuit court of appeals' order that it did not contemplate that a hearing in which witnesses would be called was necessarily required. On the contrary, it is manifest that the appellate court left it entirely up to Judge Leamy's discretion as to the method of determining whether a remand was called for. Finally, in view of the second affidavit of Lore, the bailiff involved, which entirely repudiated his original affidavit and explained his original perjury as having been suborned by petitioner, the whole basis of petitioner's motion was destroyed. And Judge Leamy was fully justified in accepting Lore's second affidavit as the truth and his first affidavit as perjured, first, because of the sworn statement of Mrs. Swift corroborating the truth of Lore's second affidavit, and secondly, because of petitioner's record as a suborner of perjury, as established at the trial (see R. 343-345, and cf. R. 118-121).<sup>9</sup>

<sup>9</sup> It may be added that Assistant United States Attorney Block, who represented the Government at the hearing before Judge Leamy, stated in a sworn affidavit that he had made a personal investigation into the truth of petitioner's charges in this respect, questioning all the jurors and also a Mrs. Mahoney, who, with Lore, was in charge of the jury during their deliberations, and that he was convinced as a result of his investigation that petitioner's charges were false (R. 798-799; see also R. 808-810).

## CONCLUSION

The petition for a writ of certiorari presents no question requiring further review by this Court. We therefore respectfully submit that it should be denied.

PHILIP B. PERLMAN,

*Solicitor General.*

ALEXANDER M. CAMPBELL,

*Acting Assistant Attorney General.*

ROBERT S. ERDAHL,

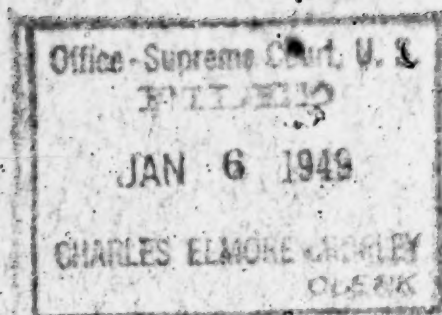
PHILIP R. MONAHAN,

*Attorneys.*

AUGUST 1948.



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No. 143

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**In the Supreme Court of the United States**

OCTOBER TERM, 1948

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ALVIN KRULEWITCH, PETITIONER

v.

UNITED STATES OF AMERICA

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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BRIEF FOR THE UNITED STATES

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ALVIN KRULEWITCH, PETITIONER

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BRIEF FOR THE UNITED STATES

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## OPINION BELOW

The opinion of the Court of Appeals (R. 857-867) is reported at 167 F. 2d 943.

## JURISDICTION

The judgment of the Court of Appeals was entered May 11, 1948 (R. 868). On June 9, 1948, by order of Mr. Justice Jackson, the time for filing a petition for a writ of certiorari was extended to July 10, 1948 (R. 869). The petition for a writ of certiorari was filed on July 9, 1948, and was, with the limitation hereinafter indicated, granted on October 11, 1948. The jurisdiction of this Court



is conferred by 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), Federal Rules of Criminal Procedure.

#### QUESTION PRESENTED

The order allowing certiorari limits review to the question presented as Question 3 by the petition for a writ of certiorari, to-wit:

It was prejudicial and reversible error for the trial court to receive in evidence, over objection, important alleged declarations of a co-conspirator after the termination of the alleged conspiracy and not in furtherance thereof.

#### STATEMENT

Count 1 of a three-count indictment (R. 11-16), filed on January 4, 1943 (R. 3), in the District Court for the Southern District of New York, charged that on or about October 20, 1941, petitioner and one Rose Sookerman, a codefendant, induced and enticed one Elizabeth Johnston to travel in interstate commerce by common carrier from New York City to Miami, Florida, for the purpose of prostitution and debauchery and for other immoral purposes, in violation of Section 3 of the Mann Act (18 U. S. C. 399). Count 2 charged the same defendants with causing the aforesaid

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<sup>1</sup> Variouslly referred to in the record as Pauline Hillson, Betty Lewis, Betty Gordon (R. 49), and Mrs. Rose Kay (R. 715).

<sup>2</sup> Variouslly referred to in the record as Elizabeth Sorrenfino, Joyce Winters, and Joyce Winston (R. 47).

transportation, in violation of Section 2 of the Mann Act (18 U. S. C. 398). The third count charged conspiracy to commit the substantive offenses. Following a trial by jury, petitioner was found guilty on all counts (R. 762). He was sentenced to imprisonment for two years on the first count, and on the other two counts the imposition of sentence was suspended, and he was placed on probation for two years to take effect at the expiration of the sentence on count 1 (R. 767). On appeal, the judgment of conviction was affirmed (R. 868).

The evidence in support of the verdict may be summarized as follows:

*Testimony of the victim, Johnston.*—Elizabeth Johnston (or Elizabeth Sorrentino, her married name, by which she was most often referred to in this, petitioner's fourth trial) first met petitioner when he picked her up on the street in New York in June 1939. Later the same day he introduced her to Rose Sookerman, his codefendant, and that night all three of them stayed in petitioner's

<sup>3</sup> This was the fourth time that petitioner had been brought to trial. His first trial, at which his codefendant was jointly prosecuted, resulted in a disagreement of the jury (R. 2). In his second trial, he and his codefendant were found guilty by a jury on all counts, and he received prison sentences aggregating 3 years and six months on counts 1 and 3 and a suspended sentence on count 2, but on appeal by petitioner alone his conviction was reversed by a divided court and a new trial granted because of trial errors (R. 2; see *United States v. Krulowitch*, 145 F. 2d 76). His third trial ended in a mistrial (R. 2).

apartment. (R. 49-51.) Johnston told petitioner at the time she met him that she was a prostitute and he told her that Sookerman was also "in the business" (R. 321). During the week after the first meeting Johnston and Sookerman committed acts of prostitution and turned the money over to petitioner (R. 51-52). Petitioner took Johnston to Chicago and endeavored unsuccessfully to place her in a brothel there (R. 51-54). He then paid her fare back to New York where she was met by Sookerman. The two women lived in petitioner's apartment for several months committing numerous acts of prostitution there. Petitioner arranged many of the dates and the women turned the proceeds over to him. (R. 54-62.) Johnston and Sookerman were arrested for practicing prostitution in October 1939, and Johnston was sent to the reformatory (R. 63-64).

Petitioner attempted to secure Johnston's release despite her unwillingness to see him,<sup>5</sup> and after she had finally been paroled to her mother in Canandaigua, New York, in December 1940, he visited her three or four times, telling her mother that he wanted to marry her. In March 1941, she returned to live in petitioner's apart-

<sup>4</sup> At the time of their meeting in 1939 petitioner was about 46 (R. 512) and Johnston was 49 (R. 125). Sookerman was reputedly petitioner's wife and had been living with him at least since 1935 (R. 179, 326, 711, 715).

<sup>5</sup> She testified that he frequently threatened her, and that he bothered her every place she moved (R. 292-295).

ment in New York City. Petitioner and Sookerman owned several cider stubes which were actually "fronts" for houses of prostitution, and she went to work there as a waitress and prostitute. Her earnings, averaging \$40 or \$50 a day, she turned over to him. (R. 64-71, 147-151; cf. R. 531-533, 719-721.)

In early October 1941, petitioner took a trip to Florida (R. 71). When he returned, he told Sookerman and Johnston that he had leased a small hotel, called the El Chico, in Miami, Florida, that "he had paid a man \$1,000 \* \* \* for a connection for his girls to work in this place," and that it would be better for them to go down there to "work" (R. 71-72, 422-425). In the latter part of October all three traveled to Miami by train on tickets purchased by petitioner (R. 72-74, 166-167, 319). Petitioner shortly returned to New York and Sookerman and Johnston, pursuant to petitioner's directions, began to practice prostitution in the hotel (R. 74-76, 174-176, 183). Johnston turned over her earnings to Sookerman who gave them to petitioner. When the police began to investigate, Sookerman took Johnston to another hotel for two nights (R. 184-186). In November, the two women were arrested for prostitution and they immediately sent a telegram to petitioner. He came to Miami

Petitioner apparently altered the date of this telegram so as to make it appear that it had been sent earlier for another purpose (R. 404-407, 569, 696-702, 704-710).

and he and Sookerman took Johnston to another house of prostitution. Sookerman collected Johnston's earnings from the house. (R. 76-78, 106-109.) Sookerman and petitioner always handled the financial "end of the business" (R. 305). Johnston became ill and early in December she and Sookerman returned to New York, going straight to petitioner's apartment. After a few hours, Johnston went to her mother's home in Canandaigua and Sookerman returned to Miami. (R. 109.)

About two days later, Johnston was arrested at her mother's house in Canandaigua by an F. B. I. agent, and was taken to Rochester where she remained for a week. During this period she was visited by Sookerman who advised her not to "talk \* \* \* until we get you a lawyer." Sookerman told her to be very careful what she said and added that "It would be better for us two girls to take the blame than Kay [an alias of petitioner] because he couldn't stand it, he couldn't stand to take it." (R. 109-112, 194.) On December 20, Johnston was released on a bond furnished by petitioner. (R. 114).

An indictment charging a violation of the Mann Act had been filed in the District Court for the Southern District of Florida. Petitioner and Sookerman were also arrested at about the same time as Johnston (R. 80-86, 391-392, 575).

At the time of this arrest Johnston gave an untruthful statement to the F. B. I. completely exonerating petitioner (R. 112-113; Gov. Ex. 5, R. 824-825). Petitioner compli-



After her release, Johnston returned to live with petitioner and Sookerman in petitioner's apartment and she resumed her work in the cider stubes as a prostitute; later, because "everything was so hot," she moved into a separate apartment, and then went to Amsterdam, New York, still practicing prostitution and still handing over her earnings to petitioner (R. 114-118, 269, 279). In February • March 1942, Johnston and Sookerman, at petitioner's direction, wrote some letters, purporting to have been written by them to petitioner during the period the women were in Florida, that is, in October and November 1941 (R. 118-121).

*Corroborative testimony.*—Cora Brown (R. 204-218) and Charles Neville (R. 221-223) testified that in early October 1941 petitioner leased the El Chico Hotel in Miami, Florida, as agent for Pauline Hillson (an alias of Sookerman). Arthur Peacock (R. 235-240) testified that he operated a retail bicycle business in the street floor of the premises occupied by the El Chico Hotel; that petitioner came in on October 1, 1941, and asked if he could rent the upstairs; that petitioner mented her and said he was sure they could beat the case (R. 115). The original indictment in the District Court for the Southern District of Florida was closed without prosecution on February 27, 1942 (R. 83).

Petitioner introduced these letters in support of his contention that he had sent Johnston to Florida to recover her impaired health (R. 121, 269-279; Def. Ex. OO and XX, R. 840-842, 849-850).

tioner led him to believe he was going to operate it as a house of prostitution; that thereafter Sookerman and Johnston occupied the premises and that their visitors were almost all men. William Davenport (R. 264-266), a Miami police officer, testified that he arrested the two women in November 1941; that Sookerman did most of the talking; that he "asked her what gave her the idea that she could open up a house of prostitution there, and she said she thought things had been taken care of."

John Dolan (R. 325-328) testified that in 1941 he was employed as doorman at an apartment house in which petitioner was a tenant; that Sookerman was living with petitioner; that Johnston came to join them later in the year; that in October 1941, all three left the building together, Johnston saying she was going to Florida; that all three were there again in December."

Mildred Krankewicz (R. 342-352) testified that she had worked as a waitress in one of petitioner's cider stubes; that at petitioner's first trial she testified falsely, at his request; that Johnston had tried to get her to report petitioner to the F. B. I.

*Defense testimony.*—Petitioner denied any responsibility for the acts of prostitution committed by Johnston and Sookerman (R. 585). He testi-

Petitioner was shown to have manufactured a statement by Dolan to support his contention that the F. B. I. had illegally seized certain papers from his apartment (R. 669-663, 702-704).

fied that he was a reputable advertising man (R. 513-518), and that he fell in love with Johnston shortly after he met her in 1939 and wanted to marry her (R. 521, 529-530, 532). He testified further that he had only known Sookerman for a very short time prior to meeting Johnston (R. 614); that when Sookerman and Johnston were arrested in New York City in October 1939 he was not aware that the charge was prostitution (R. 530, 626-628); that in October 1941 he leased the hotel in Miami for Sookerman, paying money furnished by her, because she wanted to go into the hotel business there (R. 540-547); that he sent Johnston to Florida with Sookerman because Johnston was sick (R. 548-550).

*Rebuttal testimony.*—There was testimony that Sookerman had been living with petitioner and had been known as his wife as early as 1935 (R. 710-717), and that petitioner was aware of the reason Sookerman and Johnston were arrested in New York in October 1939<sup>11</sup> (R. 721).

<sup>11</sup> In line with petitioner's other attempts to manufacture evidence it may be noted that he filed a motion for a new trial based at least in part upon a false statement induced by petitioner. The grounds were that the court's bailiff had instructed the jury during its deliberations on the nature of the verdict to be returned, and that one of the jurors had falsely stated on *voir dire* that she had never been employed by the United States. The bailiff later admitted that his affidavit was false and had been induced by petitioner's promise to take care of him. The other ground was shown to be, under the most charitable construction, completely baseless. (R. 768-823.)

## SUMMARY OF ARGUMENT

## I

Petitioner was indicted for violations of the Mann Act and for conspiracy to commit the substantive offenses. The sole issue is whether a conversation between the victim, Johnston, and petitioner's co-conspirator, Sookerman, occurring over a month after completion of the illegal transportation, in which Sookerman attempted to persuade Johnston to conceal petitioner's guilt, was admissible in evidence against petitioner. In our opinion the evidence was properly admitted against petitioner because, regardless of the accomplishment of the main object of the conspiracy, the efforts of co-conspirators to conceal each other's participation are implicitly authorized in the original agreement.

We do not question the rule of law that narrative statements made by a conspirator out of the presence of a co-conspirator after the conspiracy has ended, are not admissible as against the co-conspirator. There are, however, some well-established exceptions to the above rule. One exception is that there being an implicit understanding in every conspiracy that the parties thereto will use their efforts to conceal the criminal act after its completion, a conspiracy does not end with the accomplishment of the criminal

offense for the purpose of concealing the crime. Consequently, in such cases, once the conspiracy has been established by proof *aliunde*, the statements of a conspirator made out of the presence of a co-conspirator after the crime has been completed, are admissible as against the co-conspirator for the purpose of showing a suppression of competent evidence in order to conceal the crime or frustrate its prosecution. This has long been the rule in state courts, and the decisions of this Court do not preclude its application in federal courts.

## II

Conceding, *arguendo*, that the admission of the Sookerman statement was erroneous, we think the error was harmless, and that it could not have been the cause of any substantial prejudice to petitioner. This evidence was not essential to the Government's case, since the other evidence submitted to the jury overwhelmingly establishes petitioner's guilt. Consequently, the Sookerman statement was merely cumulative. Had Sookerman herself related it to the jury, it might have had considerable influence on them, but since it came from the victim Johnston, who was the Government's principal witness, it was no more than cumulative to the other parts of her story.



## ARGUMENT

I.

**Testimony as to Sookerman's statement to Johnston was admissible against petitioner as the statement of a coconspirator made to further the conspiracy by suppressing evidence of the crime and protecting petitioner from prosecution**

In granting the writ of certiorari, this Court limited its review to but one of the ten points raised by the petition. The facts pertinent to that one point may be stated briefly:

The conspiracy count of the indictment charged that petitioner and Sookerman conspired in October 1941 to transport the Johnston woman from New York to Florida in interstate commerce for the purpose of prostitution. The facts set forth in the Statement above indicate that there was abundant independent evidence to show that petitioner and Sookerman did enter into such a conspiracy and did fulfill their object by transporting Johnston to Florida in October 1941 and putting her "to work" in the El Chico Hotel. After all three had returned to New York in December 1941, Johnston was arrested in connection with an investigation of the case and held for a week in Rochester. There she was visited by Sookerman. Over objection, Johnston was permitted to testify to the following conversation with Sookerman during this visit (R. 111-112):

She asked me she says, "You didn't talk yet?" And I says, "No." And she says, "Well, don't," she says, "until we get you

a lawyer." And then she says, "Be very careful what you say." And I can't put in exact words. But she said, "It would be better for us two girls to take the blame than Kay because he couldn't stand it, he couldn't stand to take it."

Counsel for petitioner objected<sup>12</sup> on the ground that the conspiracy had terminated, and that the acts and declarations of the co-conspirators subsequent to the termination were not binding on each other. The Government argued that Sookerman's action was taken in furtherance of the conspiracy. The trial court, without clearly expressing its reason,<sup>13</sup> overruled the objection and admitted the conversation (R. 110-112). The Court of Appeals for the Second Circuit, in affirming this action of the trial court, said, "We think that implicit in a conspiracy to violate the law is an agreement among the conspirators to conceal the violation after as well as before the illegal plan is consummated. Thus the conspiracy continues at least for purposes of concealment, even after its primary aims have been accomplished. The statements of the co-conspirator here were made in an effort to

<sup>12</sup> Counsel had previously objected to mention of this conversation in the prosecutor's opening statement (R. 34-35).

<sup>13</sup> Some language used by the trial court indicates that it may perhaps have been of the opinion that the acts and declarations of conspirators, even after the termination of the scheme, are admissible against co-conspirators as evidence of intent (R. 411). The Court of Appeals noted that "it might conceivably be held that this evidence was admissible" for this purpose (R. 862).

protect the appellant by concealing his role in the conspiracy" (R. 862-863):

The disputed evidence thus consists of testimony as to declarations or conduct of Sookerman obviously intended to frustrate prosecution of the crimes charged in the indictment against both Sookerman and the petitioner. In fact, the declarations of Sookerman seem to be particularly directed at shielding petitioner from prosecution, for Sookerman stated that "It would be better for us two girls to take the blame than Kay [the petitioner] because he couldn't stand it, he couldn't stand to take it." In other words, Sookerman's principal purpose in making these declarations to Johnston appears to have been to protect petitioner from prosecution by persuading Johnston not to give evidence which would implicate petitioner.

It is well established that suppression of evidence by a defendant may itself be introduced as evidence of guilt. *Wilson v. United States*, 162 U. S. 613, 621; *United States v. Freundlich*, 95 F. 2d 376, 378-379 (C. A. 2); 2 Wigmore on *Evidence* (3d ed. 1940), § 278. Thus, testimony that the petitioner had attempted to persuade Johnston not to give evidence against him would be admissible as evidence of his guilt. Similarly, testimony of such attempted suppression of evidence by an agent of the petitioner would be admissible against him. So also, testimony of an attempt to suppress evidence by a conspirator is admis-

sible against a co-conspirator for the same evidentiary purpose and result as if the latter had personally attempted to suppress the evidence.

The rule that the acts and declarations of one conspirator made during the existence of the conspiracy are binding on the others, has its roots in the law of agency. *Van Riper v. United States*, 13 F. 2d 961, 967 (C. A. 2), certiorari denied, *sub nom. Akerson v. United States*, 273 U. S. 702; 4 Wigmore, *Evidence* (3d ed. 1940), § 1079. A conspiracy is a partnership in crime, and the acts and declarations of each conspirator in furtherance of the aims of the partnership are imputed to each of his fellows. *Fiswick v. United States*, 329 U. S. 211, 216; *Pinkerton v. United States*, 328 U. S. 640, 646-647; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 253.

For the purposes of this case, it must be assumed that there was independent evidence as to the existence of a conspiracy between petitioner and Sookerman as charged in the indictment, and in fact there was such evidence. Thus, there is involved here no question as to the admissibility generally of co-conspirators' statements against each other. Accordingly, if Sookerman's statements to Johnston were made during and in furtherance of the conspiracy, they are admissible against the petitioner. Petitioner's objection to the admissibility of the testimony is that the conspiracy had terminated prior to Sookerman's statements to Johnston, and that testimony as to

such statements is therefore not admissible against petitioner as evidence of the declarations of a co-conspirator.

It is our position that the testimony was admissible in that Sookerman's statements must be regarded as having been made during and in furtherance of the conspiracy between Sookerman and the petitioner. Every criminal partnership or conspiracy embraces within its purposes the avoidance of prosecution and punishment for the crime which is the primary purpose of the conspiracy. It is a natural and intended aspect of every conspiracy to commit a crime that the conspirators, both before and after the completion of the crime, will conceal the parts played by each in its commission. There is an understanding, implicit or otherwise, that the collaboration of the conspirators extends to preventing the detection of the crime and its successful prosecution.

The decision below is not in conflict with *Fiswick v. United States*, 329 U. S. 211, and other cases relied upon by the petitioner which involved confessions of conspirators made to police officers after completion of the crime, and in which it was evident that the confessions were designed to frustrate the conspiracy rather than to further it. Likewise inapposite are the cases which hold inadmissible statements made by persons who had withdrawn from the conspiracy, as well as those cases in which the statements were mere narra-



tions of past events, as distinguished from statements made for the purpose of furthering the conspiracy. In fact, the precise question here involved has had little consideration by the Federal courts. The decision below seems to represent the only direct and thorough analysis of the point.

*Logan v. United States*, 144 U. S. 263, 309, did not deal with the present question, despite the allusion in the Court's opinion to the suggestion of government counsel that the conspiracy included an attempt to manufacture evidence to shield one of the conspirators. It is entirely clear (at p. 274) that the statements held to be inadmissible were mere narrative statements by some of the conspirators and were in no sense made in furtherance of the conspiracy, since they tended to implicate rather than to shield the others. In *Brown v. United States*, 150 U. S. 93, although the facts suggest that the Government could have made the same contention as in the present case, neither the opinion nor the Government's brief indicates that the contention was made. In fact, the opinion indicates that the real holding of the case was that the existence of the conspiracy could not be established solely by evidence of declarations of alleged conspirators. Of course, it is well established that the existence of a conspiracy must be supported by other evidence before the declarations of an alleged conspirator may be admitted against an alleged co-conspirator. *Glasser*

*v. United States*, 315 U. S. 60, 74. In *Fiswick v. United States*, *supra*, this Court appeared to leave open the precise question here involved. Thus (at p. 217): "If as the Circuit Court of Appeals thought, the maintenance of the plot to deceive the Government was the objective of this conspiracy, the admissions made to the officers ended it. So far as each conspirator who confessed was concerned, the plot was then terminated. He thereupon ceased to act in the role of a conspirator." This is far from holding that statements made by a conspirator in an attempt to suppress evidence may not be received against the co-conspirator who would be protected by such suppression.

Similarly, the lower Federal courts have had little occasion to consider the precise question. The court below indicated that there was an implication contrary to its view in *Bryan v. United States*, 17 F. 2d 741, 742 (C. A. 5). In that case, however, it is not clear whether it was urged or considered that the criminal conspiracy included in its purposes the prevention of detection and prosecution. In fact, it may be that the real holding of the case is that the person whose declarations were held inadmissible had not been shown *aliunde* to be a party to the conspiracy. *Galatas v. United States*, 80 F. 2d 15, 23 (C. A. 8), certiorari denied, 297 U. S. 711, is not in point because it merely held that the acts of a conspirator were admissible against himself regard-

less of whether the conspiracy had ended. Thus, it appears that the court below is the only Federal court which has considered whether the action of a conspirator in attempting to suppress evidence against a co-conspirator, after completion of the crime which was the primary object of the conspiracy, is attributable to the latter.

It is highly significant that in general the Federal courts have not taken the position that a conspiracy necessarily terminates with the completion of the crime which was its primary purpose. Thus, in *Skelly v. United States*, 76 F. 2d 483 (C. A. 10), certiorari denied, 295 U. S. 757, it was said that a kidnapping conspiracy embraced the purposes of avoiding detection, apprehension, trial, and punishment, as well as the purpose of obtaining the ransom money. In that case, it was held that participation in the use of the ransom money in such a manner as to avoid detection made the actors parties to the kidnapping conspiracy, although the transportation of the victim in interstate commerce had been completed. *Lew Moy v. United States*, 237 Fed. 50 (C. A. 8) closely resembles the instant case. There the indictment charged a conspiracy to bring Chinese illegally into this country; the Court of Appeals upheld the admission of evidence as to the acts of some of the conspirators, subsequent to the entry, in transporting the Chinese into the interior and concealing their identity. The court stated (p. 52):

It is also urged that the conspiracy was at an end the instant the Chinese whose illegal entry was procured and facilitated were brought across the international boundary, and therefore the trial court erred in admitting in evidence the subsequent acts and declarations of one conspirator against the others. This is too narrow a view of the crime charged. Successfully to consummate the unlawful introduction of the prohibited aliens required more than the mere bringing of them across the line. It was necessary to evade the immigration officials by transporting them into the interior and concealing their identity. The subsequent assistance by defendants to that end may well have been an essential part of the unlawful project.

See also *Murray v. United States*, 10 F. 2d 409, 411 (C. A. 7), certiorari denied, 271 U. S. 673. *Heard v. United States*, 255 Fed. 829, 834 (C. A. 8) is apparently adverse to our position here, since it held inadmissible against a conspirator a declaration made by one co-conspirator to another, after the commission of the crime, that he would give the defendant a share of the loot. Not only is this decision inconsistent with the theory of *Skelly v. United States*, *supra*, but it illustrates perfectly the realism of the decision below in the instant case. Moreover, the *Heard* decision is squarely opposed by the many decisions of the

state courts which have considered the precise problem there involved.<sup>14</sup>

Since, as this Court has recently noted,<sup>15</sup> the rules of evidence in criminal cases have been largely developed in the state courts, it is not surprising to find that the problem of the instant case has been repeatedly dealt with in many state court decisions. The general and long-established rule in the state courts is that a criminal conspiracy inherently includes in its purpose the avoidance of detection and the frustration of prosecution. In *Commonwealth v. Smith*, 151 Mass. 491, evidence relating to the removal of furniture taking place after the crime of burning a house had been completed was admitted as against a co-conspirator taking no part in the moving; on the ground that the acts done were for the purpose of shielding the conspirators from the consequence of their crime. The Supreme Judicial Court of Massachusetts stated (p. 496):

\* \* \* Even if those declarations or conversations were subsequent to the burning, they were still made during the pen-

<sup>14</sup> See *People v. Storrs*, 207 N.Y. 147, 155; *Commonwealth v. Scott*, 123 Mass. 222, 235; *Commonwealth v. Stuart*, 207 Mass. 563, 567-568; *State v. Garrett*, 71 Ore. 298, 305-307; *Rawlins v. State*, 163 Ga. 406, 421-425; *Byrd v. State*, 68 Ga. 661; *Baker v. State*, 17 Ga. App. 279; *State v. Pettit*, 77 Wash. 67, 68; *Baker v. State*, 80 Wis. 416, 422; *O'Neal v. State*, 14 Tex. App. 582, 589; *State v. Stevenson*, 26 Mont. 332.

<sup>15</sup> *Michelson v. United States*, No. 23, this Term, decided December 20, 1948, slip opinion, p. 16.



dency of the criminal enterprise. They were not recitals of past occurrences, but were connected with acts done evidently to shield the conspirators from the consequences of their crime.

In *People v. Mob*, 137 Mich. 692, 707, a conversation between two conspirators after the substantive crime was committed was admitted as against a third who was not present, on the ground that the conversation related to action taken for the avowed purpose of avoiding an exposure of the crime. In *Allen v. Commonwealth*, 176 Ky. 475, the trial court had admitted evidence against one conspirator that he had attempted to frustrate prosecution by bribing a witness. On appeal, the Court of Appeals of Kentucky not only approved its admission for that purpose, but also reproved the trial court for not admitting it against the co-conspirators. In so doing, the court stated the applicable rule as follows (p. 485):

\* \* \* While it is true that statements of conspirators made after the commission of the criminal act of the conspiracy are ordinarily not competent evidence against their co-conspirators, yet where the object of the conspiracy had not been fully attained by the criminal act, statements made by any of the conspirators, with reference to the distribution of the fruits or profits of the criminal act which was but an incident in the conspiracy to procure the profits, are competent evidence against all of

the conspirators, as are also statements made after the commission of a crime in an effort to prevent the discovery of the crime or the identity of those connected with its perpetration.

Other State cases in accord are: *Hooper v. State*, 187 Ark. 88, 92; *State v. Gauthier*, 113 Ore. 297, 307; *State v. Garrett*, 71 Ore. 298; *State v. Emory*, 116 Kan. 381, 384; *State v. Richmond*, 96 Kan. 600, 603; *Lanier v. State*, 187 Ga. 534, 542; *Carter v. State*, 106 Ga. 372, 376; *Smith v. State*, 47 Ga. App. 797, 803; *Watson v. State*, 166 Miss. 194, 213; *Baldwin v. State*, 46 Fla. 115, 120; *State v. Strait*, 279 S. W. (Mo.) 109. The rule of these and analogous cases is aptly summarized in Underhill's *Criminal Evidence* (4th ed.), § 779 (pp. 1418-1420)<sup>16</sup> and 2 Wharton's *Criminal Evidence* (11th ed.), § 715 (pp. 1205-1206).<sup>17</sup>

<sup>16</sup> Section 779 of Underhill reads as follows:

"As a general rule, subject to exceptions hereinafter stated, the acts and declarations of a conspirator done or made out of the presence or hearing of a coconspirator after the termination of the conspiracy or commission of the crime are not admissible against said coconspirator, unless he acted in an incriminatory manner in connection with such declarations; but the acts and declarations of a conspirator done or made in the presence or hearing of a coconspirator after the termination of the conspiracy or commission of the crime and concerning the conspiracy or the crime committed are admissible against said coconspirator, if he expressly or impliedly acquiesced in the declarations. Acts and declarations of a conspirator after the commission of the crime, though done or made out of the presence or hearing of a coconspirator, are admis-

(Footnotes 16 and 17 continued on next page)

To summarize: the decision of the court below holds that an implicit purpose of every criminal conspiracy is to thwart detection and prosecution of the crime which is the primary purpose of the

sible against the coconspirator in the following instances: Res gestae of the crime; leaving scene of crime; concealing crime; flight or concealment of person; concealing or suppressing evidence of crime; taking means to prevent or defeat prosecution; attempting to settle insurance claim after arson to defraud insurer; possession, division and disposition of fruits of crime; possession of weapon or instrument with which crime was committed; possession of clothing connected with crime; and where the act or declaration was done or made prior to or during commission of another crime within the conspiracy."

§ 715 of Wharton contains the following statement:

"The acts and declarations of a conspirator are admissible against a co-conspirator when they are made during the pendency of the wrongful act, and this includes not only the perpetration of the offense, but also its subsequent concealment. The theory for the admission of such evidence is that persons who conspire to commit a crime, and who do commit a crime, are as much concerned, after the crime, with their freedom from apprehension, as they were concerned, before the crime, with its commission; the conspiracy to commit the crime devolves after the commission thereof into a conspiracy to avoid arrest and implication. It has also been held that a conspiracy to commit a crime endures for the purpose of escape, the concealment of evidence, or the defeat or prevention of prosecution. It has been held that evidence of a conversation between city officials who had been parties to a conspiracy to secure a city contract by bribery, after the abandonment of the conspiracy, was admissible upon the trial of one of them for the offense, where it related to the election of one of them to avoid exposure. And where the defendant was charged with being an accessory after the fact, the conspiracy was not ended so long as the defendant concealed the crime and protected the principals."

conspiracy, and that evidence as to the conduct or declarations of one conspirator in suppressing evidence of the crime is admissible against co-conspirators. This result is supported by logic and common sense. It is in accord with the rule developed and adhered to by the state courts in many cases. Since Sookerman's statement to Johnston had as its obvious purpose the inducement of Johnston not to give evidence against the petitioner, Sookerman's co-conspirator, Johnston's testimony as to that statement was clearly admissible against petitioner.

## II

**Even if the admission of Sookerman's statements was erroneous, the error was harmless**

Even assuming that the admission of Sookerman's statement was erroneous, we submit that petitioner's guilt was overwhelmingly established by the other evidence as summarized in the Statement, *supra*, pp. 3-9. There was evidence that Sookerman had lived with petitioner for years as his wife, that after Johnston appeared in 1939 the two women lived together with him, practiced prostitution in his apartment and in the cider stubes owned by him, and turned the proceeds over to him. Prior to the Florida trip in October 1941, petitioner told Sookerman in Johnston's presence that he had leased a hotel in Miami and had paid \$1,000 so

that they could "work" there without molestation. Sookerman, of course, accompanied petitioner and Johnston to Florida. After petitioner's return to New York, Sookerman took charge of the financial "end of the business," turning the proceeds over to petitioner. She expressed surprise when told by the Miami police that they could not continue, saying that she thought things had been arranged. She continued to look after petitioner's interests, however, by placing Johnston in an established house, from which she collected Johnston's income. After the return to New York, we find the two women again living in petitioner's apartment and "working" in the cider stubes. And in early 1942, both Sookerman and Johnston, at petitioner's direction, wrote pre-dated letters designed for use in case of a Mann Act prosecution.

Further, Johnston's testimony as to Sookerman's efforts to conceal petitioner's guilt added no new element to the Government's case. Its effect was to show an attempt by the conspirators, Sookerman and petitioner, to suppress evidence. But the Government introduced other evidence in abundance on this point. See footnotes 6, 8, 9, 10 and 11, *supra*. This particular bit of testimony was not necessary to the Government's contention that petitioner's guilt was indicated by his attempts to suppress or manufacture evidence. It was simply cumulative in nature.

Under the "harmless error" statute, Section



269 of the Judicial Code, as amended,<sup>18</sup> an appellate court may not reverse a judgment of conviction for errors "which do not affect the substantial rights of the parties." Construing this statute in *Kotteakos v. United States*, 328 U. S. 750, 764, this Court stated that, in determining whether error should result in reversal, the question is "what effect the error had or reasonably may be taken to have had upon the jury's decision. \* \* \*. If, when all is said and done, the conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand. \* \* \*. And, dealing more specifically with the particular type of situation presented by the present case this Court said, 328 U. S. at 763:

\* \* \* Errors of this sort in criminal causes conceivably may be altogether harmless in the face of other clear evidence, although the same error might turn scales otherwise level, as constantly appears in the application of the policy of § 269 to questions of the admission of cumulative evidence.<sup>19</sup>

We submit that this is certainly not a case in which the scales, "otherwise level," were tipped

<sup>18</sup> 28 U. S. C. 391; see also Rule 52 (a), F. R. Crim. P.

<sup>19</sup> See also footnote 17 to the text, citing *Lucky v. United States*, 100 F. 2d 308 (C. A. 5); *United States v. Goldsmith*, 91 F. 2d 983, 986 (C. A. 2), certiorari denied, 302 U. S. 718; and *Beach v. United States*, 19 F. 2d 739, 743 (C. A. 8), certiorari denied, 276 U. S. 623. For some other particularly apposite cases in which cumulative evidence was held harmless, even though erroneously admitted, see *United*

against petitioner by the admission of the evidence of which he complains. The evidence was not essential to the Government's case, for it had already been thoroughly established by other evidence that he had made attempts to conceal his guilt. Thus, it was merely cumulative. And there was nothing unique about this particular bit of evidence. Had the jury heard it from Sookernian herself, it might have stood out in the minds of the jurors. It came, however, from the victim, Johnston, whom the Government used to present the general picture of petitioner's wrong-doing. It added nothing to Johnston's story. It placed no stamp of credibility upon her testimony. If the jury chose to believe her, which they obviously did, there was much in her story, aside from the Rochester conversation with Sookerman, to convince them of petitioner's guilt and of Sookerman's full knowledge of, and participation in, his offenses.

Johnston, disreputable though she was,<sup>20</sup> was strongly corroborated on essential points by other

*States v. Groves*, 122 F. 2d 87, 91 (C. A. 2), certiorari denied, 314 U. S. 670; *Hilliard v. United States*, 121 F. 2d 992, 999 (C. A. 4), certiorari denied, 314 U. S. 627; *United States v. Bobb*, 106 F. 2d 37, 40 (C. A. 2), certiorari denied, 308 U. S. 589; *Osborne v. United States*, 17 F. 2d 246, 250 (C. A. 9), certiorari denied, 274 U. S. 751; *MacDaniel v. United States*, 294 Fed. 769, 770-771 (C. A. 6), certiorari denied, 264 U. S. 593.

<sup>20</sup> See *United States v. Krulewitch*, 145 F. 2d 76, 78 (C. A. 2).

independent witnesses.<sup>21</sup> Petitioner, on the other hand, relying chiefly on his own testimony for exoneration, was shown to have made numerous statements at earlier proceedings conflicting with his testimony at this trial (see, e. g., R. 605-606, 611-612, 622, 627-628, 632, 646-650, 688). Also, the jury in this case could have been influenced by evidence that at petitioner's first trial he had induced a witness to commit perjury (R. 340-352). We think it manifest that under the circumstances the evidence of Sookerman's attempt to shield petitioner can have had no appreciable influence upon the jury's decision.

#### CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the Court of Appeals should be affirmed.

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JANUARY 1949.

<sup>21</sup> See the Statement (*supra*, pp. 7-8).